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15 Attorneys for Defendants
16 BELMONT VILLAGE SUNNYVALE, INC.,
17 BELMONT CORP, AND BELMONT VILLAGE L.P.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 CV 08

1711

15 SALVADORE TEMORES,

16 Plaintiff,

17 vs.

18 BELMONT VILLAGE SUNNYVALE,
19 INC., a California Corporation;
20 BELMONT CORP, a Maryland
21 Corporation; BELMONT VILLAGE,
22 and DOES 1-25, inclusive,

23 Defendants.

Case No.

[Santa Clara County Superior Court Case No.
108CV106332]

DECLARATION OF SHANNON S. SEVEY
IN SUPPORT OF DEFENDANTS' MOTION
FOR REMOVAL

DECLARATION OF SHANNON S. SEVEY
ISO REMOVAL TO FEDERAL COURT

1 I, Shannon S. Sevey, declare and state as follows:

2 1. I am an attorney licensed by the Bar of the State of California, and I am
3 admitted to practice before this Court. I am an associate with the law firm of Paul, Hastings,
4 Janofsky & Walker, counsel of record for Defendants Belmont Village Sunnyvale, Inc.,
5 BelmontCorp, and Belmont Village, L.P. ("Defendants"), and I am one of the attorneys
6 responsible for the defense of this action. Except where otherwise noted, I have personal
7 knowledge of the facts set forth in this Declaration, and if called to testify under oath, could and
8 would testify competently thereto.

9 2. On February 21, 2008, plaintiff Salvadore Temores ("Plaintiff") filed his
10 Complaint entitled: "*Salvadore Temores v. Belmont Village Sunnyvale, Inc., a California*
11 *Corporation; BelmontCorp, a Maryland Corporation; Belmont Village and DOES 1-25,*
12 *inclusive.*" True and correct copies of the Summons and Complaint are attached as Exhibit "A."

13 3. On February 27, 2008, Plaintiff served Defendant Belmont Village
14 Sunnyvale, Inc. with a copy of his Summons, Complaint, and Civil Case Information Sheet.
15 Plaintiff filed a Proof of Service of Summons with the state court on February 28, 2008. See
16 Exhibit "A."

17 4. On March 10, 2008, Defendant BelmontCorp served Plaintiff with a Notice
18 of Deposition and Requests for Production of Documents, true and correct copies of which are
19 attached as Exhibit "B."

20 5. On March 28, 2008, Defendants filed their Answer in the Superior Court of
21 California for the County of Santa Clara. A true and correct copy of the Answer is attached as
22 Exhibit "C."

23 6. Notice of this removal is being given to the adverse party and to the state
24 court pursuant to 28 U.S.C. § 1446(d). A true and correct copy of Defendants' Notice to State
25 Court Clerk of Filing of Notice of Removal of Action to Federal Court is attached as Exhibit "D."
26 A true and correct copy of Defendants' Notice to Adverse Party of Filing of Notice of Removal of
27 Action to Federal Court is attached as Exhibit "E." Proof of service of the present Notice to State
28 Court Clerk of Filing of Notice of Removal of Action to Federal Court and the Notice to Adverse

1 Party of Filing of Notice of Removal of Action to Federal Court will be filed with this Court
2 shortly after the Superior Court filing and service upon the adverse parties are accomplished.

3 I declare under penalty of perjury under the laws of the State of California and the
4 United States of America that the foregoing is true and correct.

5 Executed on March 28, 2008, in Palo Alto, California.

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7 
8 SHANNON S. SEVEY
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SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BELMONT VILLAGE SUNNYVALE, INC., a California Corporation;
BELMONTCORP, a Maryland Corporation, BELMONT VILLAGE and DOES 1-25,
inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**
Salvadore Temores

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED**

2008 FEB 21 A 9 14

CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
BY A. Iias
DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Santa Clara County Superior Court

CASE NUMBER
(Número del Caso):**108CV106332**

191 North First Street

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ASHWIN V. LADVA, ESQ.

LADVA LAW FIRM

530 Jackson Street, 2nd Floor

San Francisco, CA 94133

(415) 296-1100

DATE:

Clerk, by

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Belmont Village Sunnyvale Inc., a California Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

Page 1 of 1

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ASHWIN V. LADVA [State Bar # 206140] Ladva Law Firm 530 Jackson Street, 2nd Floor San Francisco, CA 94133 TELEPHONE NO.: (415) 296-8844 FAX NO.: (415) 296-8847 ATTORNEY FOR (Name): Plaintiff; Salvadore Temores		FOR COURT USE ONLY ENDORSED 2008 FEB 21 A 9 14 KIM PERE, CLERK OF THE SUPERIOR COURT COUNTY OF SANTA CLARA, CALIFORNIA BY: A. Iles DEPT. CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
CASE NAME: Temores vs. Belmont Village, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	108CV106332 JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): fail to pay overtime, pay wages upon discharge, allow breaks, see pay recs

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 2/19/2008

ASHWIN V. LADVA

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

Temores v. Belmont Village et al

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CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PUPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PUPD/WD

Non-PUPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PUPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

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1 Ashwin Ladv, Esq. (206140)
2 Jason Lundberg, Esq. (248913)
3 Ladv Law Firm
4 530 Jackson Street, 2nd Floor
5 San Francisco, CA 94133
6 Phone: (415) 296 8844
7 Fax: (415) 296 8847

8 Attorneys for Plaintiff,
9 Salvadore Temores

ENDORSED

2008 FEB 21 A 9 14

CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA
By: A. Ilas

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12

13 SALVADORE TEMORES

Case No. **108CV106332**

14 Plaintiff,

COMPLAINT FOR DAMAGES

15 vs.

Willful Violations of California Labor Code
Sections 510 and 204; 201, 202 and 203; 226.7
and IWC Orders; 226; Violations of Bus. And
Prof. Code Sections 17200, et. seq.; and for
Declaratory Relief.

16 BELMONT VILLAGE SUNNYVALE, INC.,
17 a California Corporation; BELMONTCORP, a
18 Maryland Corporation, BELMONT VILLAGE
19 and DOES 1-25, inclusive,

20 Defendants

21 Plaintiff SALVADORE TEMORES, for his complaint against defendants
22 BELMONT VILLAGE SUNNYVALE, INC., BELMONTCORP, BELMONT VILLAGE and
23 DOES 1-25, inclusive, alleges upon information and belief, except as to the allegations that
24 pertain to Plaintiffs and his counsel, as follows:

25 **JURISDICTION AND VENUE**

26
27 1. Plaintiff SALVADORE TEMORES is an individual who, at all relevant time
28 periods, resided in California, was a citizen of the State of California, was offered employment
by BELMONT VILLAGE SUNNYVALE, INC. and/or BELMONT VILLAGE (hereinafter

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1 referred to as "BV" or "CORPORATE DEFENDANTS"), at its Sunnyvale, California facility.
2 Plaintiff TEMORES was employed by BV in the position of Community Relations / Inside
3 Sales.

4 2. Defendant BELMONT VILLAGE SUNNYVALE, INC is and was, at all times
5 relevant to this complaint, a California corporation, in the senior home and assisted living
6 business in the State of California, City of Sunnyvale. Defendant BELMONT VILLAGE
7 SUNNYVALE, INC had, at all times relevant hereto, its headquarters and principal place of
8 business in the State of California. Defendant BELMONT VILLAGE SUNNYVALE, INC is
9 referred to herein as "BELMONT VILLAGE" or "CORPORATE DEFENDANT."
10

11 3. Defendant BELMONTCORP is and was, at all times relevant to this complaint, a
12 Maryland corporation, in the senior home and assisted living business in the State of California,
13 as well as other locations throughout the United States. Defendant BELMONTCORP had, at all
14 times relevant hereto, its headquarters and principal place of business in the State of Maryland
15 Defendant BELMONTCORP is referred to herein as "BV" or "CORPORATE DEFENDANT."
16

17 4. Defendant BELMONT VILLAGE is and was, at all times relevant to this
18 complaint, a Maryland corporation, in the senior home and assisted living business in the State of
19 California, as well as other locations throughout the United States. Defendant BELMONT
20 VILLAGE had, at all times relevant hereto, its headquarters and principal place of business in
21 the State of Maryland Defendant BELMONT VILLAGE is referred to herein as "BV" or
22 "CORPORATE DEFENDANT."
23

24 5. Plaintiff lacks sufficient information and belief to allege the true names and
25 capacities of defendants sued herein as DOES 1 through 25, inclusive. For that reason, Plaintiff
26 sues said fictitiously named defendants by such fictitious names. When the true names, nature
27 and capacity of said fictitiously named defendants are ascertained, Plaintiff shall amend this
28 Complaint accordingly. At all times herein mentioned, all defendants herein, whether named or
unnamed were and are responsible and liable to Plaintiff for all of the Plaintiff's damages and
other relief prayed for herein. Plaintiff alleges on information and belief that at all times herein

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1 mentioned, each of the defendants herein, whether named or unnamed, was the agent, servant
2 employee, co-conspirator, co-adventurer, and employee of each other defendant herein, whether
3 named or unnamed. With respect to each action and inaction pled in the following paragraphs,
4 each of the defendants, whether named or unnamed, was acting within the course and scope of
5 their agency and employment and was acting with the full knowledge, consent, ratification and
6 approval of each other defendant herein, whether named or unnamed.

7
8 6. This Court has personal jurisdiction over the named corporate Defendant, which:
9 (1) conducts business in the State of California through its branches and service centers in
10 California; (2) hires and maintains employees in the State of California; and (3) avails itself of
11 the protection of the laws of the State of California.

12 7. Venue is proper in this Court because Defendants committed the acts complained
13 of herein in Santa Clara County.

14
15 **FACTUAL ALLEGATIONS**

16 8. This action is brought by Plaintiff because he was denied regular and overtime
17 wages, and meal and rest periods, in violation of the Labor Code and Industrial Wage
18 Commission ("IWC") Orders. This action is also brought for CORPORATE DEFENDANTS'
19 failure to maintain employees' payroll records, and make those records available to employees
20 for inspection upon request, in violation of California law.

21 9. CORPORATE DEFENDANTS failed to provide Plaintiff with regular and overtime
22 wages. Defendants' policies and practices toward its employees and Plaintiff violate California
23 Labor Code §§ 510 and 204, which provide, in relevant part:

24
25 Sec. 510(a). Eight hours of labor constitutes a day's work. Any work in
26 excess of eight hours in one workday and any work in excess of 40 hours
27 in any one workweek and the first eight hours worked on the seventh day
28 of work in any one workweek shall be compensated at the rate of no less
than one and one-half times the regular rate of pay for an employee. Any
work in excess of 12 hours in one day shall be compensated at the rate of
no less than twice the regular rate of pay for an employee. In addition,

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1 any work in excess of eight hours on any seventh day of a workweek shall
2 be compensated at the rate of no less than twice the regular rate of pay of
3 an employee.

4 Sec. 204. All wages, other than those mentioned in Section 201, 202,
5 204.1, or 204.2, earned by any person in any employment are due and
6 payable twice during each calendar month, on days designated in advance
7 by the employer as the regular paydays.

8 10. CORPORATE DEFENDANTS failed to provide Plaintiff with meal and rest periods.
9 Defendants' policies and practices towards its employees violate California Labor Code § 226.7,
10 which provides:

- 11 (a) No employer shall require any employee to work during any meal
12 or rest period mandated by an applicable order of the Industrial
13 Welfare Commission.
- 14 (b) If an employer fails to provide an employee a meal period or rest
15 period in accordance with an applicable order of the Industrial
16 Welfare Commission, the employer shall pay the employee one
17 additional hour of pay at the employee's regular rate of
18 compensation for each work day that the meal or rest period is not
19 provided.

20 11. CORPORATE DEFENDANTS failed to maintain accurate payroll records, and fail to
21 provide Plaintiff with those records for inspection upon request. Defendants' policies and
22 practices towards its employees violate California Labor Code § 226, which provides, in relevant
23 part:

- 24 (a) Every employer shall, semimonthly or at the time of each payment of
25 wages, furnish each of his or her employees, either as a detachable part of
26 the check, draft, or voucher paying the employee's wages, or separately
27 when wages are paid by personal check or cash, an accurate itemized
28 statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except for any employee whose compensation is
solely based on a salary and who is exempt from payment of overtime
under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission, (3) the number of piece-rate units earned
and any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is

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1 paid, (7) the name of the employee and his or her social security number,
2 except that by January 1, 2008, only the last four digits of his or her social
3 security number or an employee identification number other than a social
4 security number may be shown on the itemized statement, (8) the name
5 and address of the legal entity that is the employer, and (9) all applicable
6 hourly rates in effect during the pay period and the corresponding number
7 of hours worked at each hourly rate by the employee. The deductions
8 made from payments of wages shall be recorded in ink or other indelible
form, properly dated, showing the month, day, and year, and a copy of the
statement or a record of the deductions shall be kept on file by the
employer for at least three years at the place of employment or at a central
location within the State of California.

9 (b) An employer that is required by this code or any regulation adopted
10 pursuant to this code to keep the information required by subdivision (a)
11 shall afford current and former employees the right to inspect or copy the
12 records pertaining to that current or former employee, upon reasonable
13 request to the employer. The employer may take reasonable steps to assure
14 the identity of a current or former employee. If the employer provides
15 copies of the records, the actual cost of reproduction may be charged to
16 the current or former employee.

17 (c) An employer who receives a written or oral request to inspect or copy
18 records pursuant to subdivision (b) pertaining to a current or former
19 employee shall comply with the request as soon as practicable, but no later
20 than 21 calendar days from the date of the request. A violation of this
21 subdivision is an infraction.

22 12. Defendants routinely required employees to work more than five (5) hours at a time
23 without a break. Plaintiff was routinely not permitted to take a one-hour meal period or even a
24 30-minute meal period, as required by law. Defendants routinely scheduled employees to work
25 consecutive hours (over five) during a given day without interruption.

26 13. Defendants routinely denied regular wages, and overtime wages to Plaintiff working
27 more than eight (8) hours per day and more than forty (40) hours per week. In addition,
28 Defendants routinely failed to timely pay Plaintiff his due wages.

14. Defendant's illegal policy of denying regular and overtime wages, failing to timely
pay wages, and forcing employees to forego a meal and rest period also constitute a violation of
California's Unfair Competition Law (Business and Professions Code §§17200, et seq.), in that
Defendant's policies and practices constitute unlawful, unfair or fraudulent business acts or

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1 practices, including violations of California Labor Code provisions and California IWC Orders.

2 15. Plaintiff seeks injunctive relief prohibiting Defendants from engaging in the illegal
3 labor acts described herein. Injunctive relief is required. Unless enjoined, Defendants' unlawful
4 conduct will continue unchecked, while Plaintiff bears the financial brunt of Defendant's
5 unlawful conduct.
6

7 16. Plaintiff also seeks restitution of costs incurred by Plaintiff under California's Unfair
8 Competition Law.

9
10 **First Cause of Action**

11 **For Willful Violations of California Labor Code §§ 510 and 204 –**
12 **Failure to Pay All Wages and Overtime Under California Law**

13 17. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
14 forth herein.

15 18. On January 1, 2000, Labor Code § 510(a) was enacted and provides:

16
17 Eight hours of labor constitutes a day's work. Any work in excess of eight
18 hours in one workday and any work in excess of 40 hours in any one
19 workweek and the first eight hours worked on the seventh day of work in
20 any one workweek shall be compensated at the rate of no less than one and
21 one-half times the regular rate of pay for an employee. Any work in
22 excess of 12 hours in one day shall be compensated at the rate of no less
23 than twice the regular rate of pay for an employee. In addition, any work
24 in excess of eight hours on any seventh day of a workweek shall be
25 compensated at the rate of no less than twice the regular rate of pay of an
26 employee.

27 19. Labor Code § 1194(a) states:

28
29 Notwithstanding any agreement to work for a lesser wage, any employee
30 receiving less than the legal minimum wage or the legal overtime
31 compensation applicable to the employee is entitled to recover in a civil
32 action the unpaid balance of the full amount of this minimum wage or
33 overtime compensation, including interest thereon, reasonable attorney's
34 fees, and costs of suit.

35 20. Labor Code § 204 states, in pertinent part:

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1 All wages, other than those mentioned in Section 201, 202, 204.1, or
2 204.2, earned by any person in any employment are due and payable twice
3 during each calendar month, on days designated in advance by the
4 employer as the regular paydays.

5 21. Under California law, CORPORATE DEFENDANTS are required to pay wages for
6 each hour worked, and overtime wages when non-exempt employees work over 8 hours in a day
7 or 40 hours in a week by calculating the hourly rate and then computing the overtime premium
8 amount owed. Plaintiff has worked for Defendants without being paid for all hours worked,
9 regular and overtime.

10 22. As a result of CORPORATE DEFENDANTS' violation of statutory duties to comply
11 with statutory wage requirements, as more fully set forth above, Plaintiff was damaged in an
12 amount above the jurisdictional limits of this Court.

13 23. Plaintiff seeks as damages all wages owed to Plaintiff by CORPORATE
14 DEFENDANTS.

15 24. Plaintiff is entitled to, and therefore request, an award of pre-judgment interest on the
16 unpaid wages set forth herein.

17 25. Plaintiff has incurred, and will continue to incur attorneys' fees and costs in the
18 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions of law.
19 Wherefore, Plaintiffs prays judgment as set forth herein below.
20

21 **Second Cause of Action**

22 **For Willful Violations of California Labor Code §§ 201, 202, and 203 –**

23 **Failure to Pay Wages Upon Discharge or Quitting; Waiting Time Penalties**

24 26. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
25 forth herein

26 27. California Labor Code §§ 201 and 202 require CORPORATE DEFENDANTS to pay
27 their employees all wages due immediately upon discharge or 72 hours after an employee quits.
28 California Labor Code § 203 provides that if an employer willfully fails to timely pay such

1 wages the employer must, as a penalty, continue to pay the subject employees' wages until the
 2 back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of
 3 wages. A worker need not prove malice or intentional conduct in establishing their claim for
 4 waiting time penalties, but merely establish the employer did not do something it was obligated
 5 to do. (See Mamika v. Barca (1998) 68 Cal. App. 4th 487; Barnhill v. Robert Saunders & Co.
 6 (1981) 125 Cal.App.3d 1.)

7
 8 28. Plaintiff is entitled to unpaid compensation, but to date has not received such
 9 compensation. As a consequence of CORPORATE DEFENDANTS' willful conduct in not
 10 paying compensation for all hours worked, Plaintiff is entitled to 30 days wages as penalty under
 11 Labor Code § 203, together with interest thereon and attorneys' fees and costs. Wherefore,
 12 Plaintiff prays judgment as set forth herein below.

13 Third Cause of Action

14 15 **For Willful Violations of California Labor Code § 226.7 –** 16 **Failure to Afford Mandatory Breaks or Meal Periods as Required by** 17 **IWC Orders and Labor Code**

18 29. Plaintiff repeat and realleges the preceding and subsequent paragraphs as
 19 though set forth herein.

20 30. At all times relevant, Plaintiff was covered by the provisions of Industrial
 21 Wage Commission ("IWC") Orders, including IWC Orders 1-2001.

22 31. The IWC Orders provide, in applicable part:

23
 24 11. (A) No employer shall employ any person for a work period of more
 25 than five (5) hours without a meal period of not less than 30 minutes,
 26 except that when a work period of not more than six (6) hours will
 27 complete the day's work the meal period may be waived by mutual
 28 consent of the employer and employee. In the case of employees covered
 by a valid collective bargaining agreement, the parties to the collective
 bargaining agreement may agree to a meal period that commences after no
 more than six (6) hours of work.

11. (B) An employer may not employ an employee for a work period of

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1 more than ten (10) hours per day without providing the employee with a
2 second meal period of not less than 30 minutes, except that if the total
3 hours worked is no more than 12 hours, the second meal period may be
4 waived by mutual consent of the employer and the employee only if the
5 first meal period was not waived.

6 11. (C) Unless the employee is relieved of all duty during a 30 minute
7 meal period, the meal period shall be considered an "on duty" meal period
8 and counted as time worked. An "on duty" meal period shall be permitted
9 only when the nature of the work prevents an employee from being
10 relieved of all duty and when by written agreement between the parties an
11 on-the-job paid meal period is agreed to. The written agreement shall
12 state that the employee may, in writing, revoke the agreement at any time.

13 11. (D) If an employer fails to provide an employee a meal period in
14 accordance with the applicable provisions of this order, the employer shall
15 pay the employee one (1) hour of pay at the employee's regular rate of
16 compensation for each workday that the meal period is not provided.

17 12. (A) Every employer shall authorize and permit all employees to take
18 rest periods, which insofar as practicable shall be in the middle of each
19 work period. The authorized rest period time shall be based on the total
20 hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof. However, a rest period need not be
22 authorized for employees whose total daily work time is less than three
23 and one-half (3 ½) hours. Authorized rest period time shall be counted as
24 hours worked for which there shall be no deduction from wages.

25 12. (B) If an employer fails to provide an employee a rest period in
26 accordance with the applicable provisions of this order, the employer shall
27 pay the employee one (1) hour of pay at the employee's regular rate of
28 compensation for each workday that the rest period is not provided.

32. California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or
rest period mandated by an applicable order of the Industrial Welfare
Commission.

(b) If an employer fails to provide an employee a meal period or rest
period in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work day that
the meal or rest period is not provided.

33. CORPORATE DEFENDANTS routinely failed to provide Plaintiff with a 30-

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1 minute unpaid meal period within the first five (5) hours of work in compliance with
2 IWC Orders and Labor Code § 226.7. Defendants routinely failed to provide Plaintiff
3 with a second 30-minute meal period within the second five (5) hours of work in
4 compliance with IWC Orders and Labor Code § 226.7. As a result of Defendants'
5 failure, Plaintiff is entitled to recover an amount to be proved at trial, of not less than one
6 additional hour of pay at the regular rate of compensation for each workday that the meal
7 period was not provided, and any and all civil penalties provided by law.

8
9 34. CORPORATE DEFENDANTS routinely failed to provide Plaintiff with a 10-
10 minute paid rest period for each four (4) hour period of work, in compliance with IWC
11 Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff is entitled to
12 recover an amount to be proved at trial, of not less than one additional hour of pay at the
13 regular rate of compensation for each workday that the rest period was not provided, and
14 any and all civil penalties provided by law.

15 35. CORPORATE DEFENDANTS' policy and practice of denying Plaintiff meal
16 and rest periods constitutes a willful violation of California Labor Code § 226.7. Plaintiff
17 has sustained damages as a direct and proximate consequence of the Defendants' willful
18 and illegal conduct, to wit, he has been forced to work continuously throughout the day,
19 every day, without being allowed to take meal and rest periods.

20 36. Plaintiff has incurred, and will continue to incur attorney fees and costs in the
21 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions
22 of law. Wherefore, Plaintiff prays judgment as set forth herein below.

23
24 Fourth Cause of Action

25 For Willful Violations of Labor Code § 226 –

26 Failure to Maintain Pay Records; Failure to Make Pay Records Available Upon Request

27
28 37. Plaintiff repeats and realleges the preceding and subsequent paragraphs as

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1 though set forth herein.

2 38. CORPORATE DEFENDANTS knowingly and intentionally failed to
3 maintain accurate pay records, and failed to allow current and former employees to
4 inspect pay records upon request, in violation of California Labor Code § 226.

5 39. As a direct result of CORPORATE DEFENDANTS' failure, Plaintiff was
6 injured and are entitled to recover an amount to be proved at trial, of not less than \$750
7 for each violation.

8 40. Plaintiff is entitled to statutory penalties and attorneys' fees pursuant to Labor
9 Code § 226 and California Code of Civil Procedure § 1021.5. Wherefore, Plaintiff prays
10 judgment as set forth herein below.

11
12 Fifth Cause of Action

13
14 For Violations of California Business and Professions Code Sections 17200, et seq.

15 Based Upon Defendants' Unfair Business Acts and Practices

16
17 41. Plaintiff repeats and realleges the preceding and subsequent paragraphs
18 as though set forth herein.

19 42. Plaintiff further brings this action pursuant to the Business and
20 Professions Code Sections 17200, et seq., seeking restitution for monies owed for regular
21 and overtime wages, denial of meal and rest periods, and injunctive relief to enjoin
22 CORPORATE DEFENDANTS' illegal practices.

23 43. The Unfair Competition Law prohibits all unfair competition, which is
24 defined as "any unlawful, unfair or fraudulent business act or practice." Plaintiff has
25 standing to bring this claim because he is a direct victim of CORPORATE
26 DEFENDANTS' illegal and unfair business practices, which Defendants engaged in for
27 their sole financial benefit.

28 44. Defendants, and each of them, are "persons" as defined under Business

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1 and Professions Code § 17201. Each of the directors, officers, and/or agents of
2 Defendants, and each of them, are equally responsible for the acts of the other directors,
3 officers, employees and/or agents as set forth in the Business and Professions Code §
4 17095.

5 45. Plaintiff brings this action in the interest of other employees of
6 Defendants, and each of them, and in the interest of the public pursuant to § 17203 of the
7 California Business and Professions Code. Plaintiff brings this cause of action seeking
8 restitution for CORPORATE DEFENDANTS' failure to pay employees regular and
9 overtime wages, and failure to provide meal and rest periods, as well as an injunction
10 prohibiting Defendants from denying employees regular and overtime wages and meal
11 and rest periods, now and in the future.

12 46. Plaintiff brings this action to pursue claims during a 4-year statute of
13 limitations under § 17208 of the California Business and Professions Code.

14 47. The following practices of Defendants, and each of them, are unlawful and
15 unfair business practices under California Business and Professions Code §§ 17200 et
16 seq.:
17

- 18 (a) failure to pay all regular and overtime wages, in violation of the
19 California Labor Code and all other applicable laws;
20 (b) failure to provide rest breaks and meal periods pursuant to the
21 California Labor Code and IWC wage orders;
22 (c) failure to maintain accurate pay records, and make those records
23 available for inspection upon request by employees;
24 (d) unjust enrichment due to the failure to pay wages, including
25 overtime wages.
26

27 48. At all times material to this action, CORPORATE DEFENDANTS' conduct
28 described above is an unfair, unlawful, and/or fraudulent business practice in violation of
California Business & Professions Code §§ 17200 et seq.

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1 49. As alleged hereinabove, CORPORATE DEFENDANTS have inequitably and
2 unlawfully conspired, agreed, arranged and combined to violate California labor laws, as alleged
3 herein.

4 50. As set forth below, Plaintiff is informed and believe and thereupon allege, that by
5 failing to pay wages to all employees at Defendants' business, Defendants have engaged in
6 business within the State of California in a manner that injured competitors, lead to
7 misrepresentations to the public about the manner in which Defendants engaged in business,
8 and/or destroyed competition in violation of Business and Professions Code § 17043. Upon
9 information and belief, Plaintiff alleges that Defendants engaged in the acts and omissions
10 heretofore alleged for the purpose of profiting from lower labor costs, and obtaining an unlawful
11 or unfair advantage, all in a scheme to engage in unfair competition, at the expense of their
12 employees and to the detriment of public policy for the lawful employment of employees.

13 51. Pursuant to Business and Professions Code §§ 17071 and 17075, the failure of
14 Defendants, and each of them, to pay all wages, including overtime wages, is admissible as
15 evidence of Defendants' intent to violate the California Unfair Practices Act.

16 52. As a direct and proximate result of the unfair, unlawful, and/or
17 fraudulent business practices alleged herein, Plaintiff has been denied due wages, both
18 regular and overtime, as well as meal and rest periods, all to their detriment and all to
19 CORPORATE DEFENDANTS' illegal economic advantage.

20 53. Plaintiff is informed and believe and thereon allege that the Defendants,
21 and each of them, by committing the above-described acts, have deceived the public by
22 illegally depriving its employees regular and overtime wages, and meal and rest periods,
23 thus injuring its employees.

24 54. Business and Professions Code provides that the Court may restore to an
25 aggrieved party any money or property acquired by means of unlawful and unfair
26 business practices. Plaintiff seeks restitution of all unpaid wages owing to him and
27 members of the general public, according to proof, that the Defendants have enjoyed as a
28

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1 result of the unfair business practices.

2 55. Business and Professions Code § 17202 states: "Notwithstanding
3 Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a
4 penalty, forfeiture, or penal law in a case of unfair competition."

5 56. In addition to restoration of all wages owed, Plaintiff seeks to enforce
6 penalties in the interest of himself, in the interest of other employees of Defendants, and
7 each of them, and in the interest of the general public pursuant to § 17202:

- 8 (a) waiting time penalties (Labor Code § 203);
9 (b) extra hour of pay for not authorizing or permitting breaks and meal
10 periods (Labor Code § 226.7);
11 (c) failure to maintain and make available for inspection accurate pay
12 records (Labor Code § 226)
13

14 57. There is a financial burden incurred in pursuing this action which would
15 be unjust to place on Plaintiff, because the burden of enforcing workforce-wide rights is
16 disproportionate to that of enforcing only individual claims. It would be against the
17 interests of justice to force payment of attorneys' fees from Plaintiff's recovery in this
18 action. Therefore, attorneys' fees are appropriate and sought pursuant to all applicable
19 laws, including but not limited to California Code of Civil Procedure § 1021.5.

20 58. Unless equitable relief is granted, Plaintiff and others similarly situated
21 will continue to be subjected to Defendants' illegal conduct. Pursuant to Business and
22 Professions Code §§ 17203, plaintiffs seeks a permanent injunction enjoining
23 Defendants' continuing violations of California's Unfair Competition Law on the
24 grounds that such acts described herein violate § 17200 of the Business and Professions
25 Code and California's public policy. Wherefore, Plaintiff prays judgment as set forth
26 herein below.
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61. Plaintiff also seeks a Declaration by this Court that Defendants' policy and practice of denying regular and overtime wages and meal and rest periods constitute a violation of California law, as alleged herein. In addition, Plaintiff seeks a Declaration by this Court that Defendants' policy and practice of failing to maintain accurate pay records, and failing to provide employees with those records for inspection upon request constitutes a violation of California law, as alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- a.) For damages for unpaid wages, including regular and overtime wages, and such general and special damages as may be appropriate, according to proof at trial;
- b.) For 30 days waiting time penalties under Labor Code § 203;
- c.) For statutory penalties under Labor Code § 210 and 558(a)(3);
- d.) For penalties under Labor Code § 226(f);
- e.) For damages calculated at one extra hour for each day no rest period was provided and at one extra hour for each day no meal period was provided (Labor Code § 226.7);
- f.) Declaring that the concerted violations alleged herein constitute unfair competition in violation of California's Unfair Competition Law, and violations of California's Labor Code;

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- 1
- 2 g.) Permanently enjoining Defendants from continuing to engage in the unlawful
- 3 concerted conduct described herein;
- 4 h.) Equitable remedies, including but not limited to, an equitable accounting, as
- 5 the court deems just and proper under the circumstances;
- 6 i.) Granting Plaintiff the costs of prosecuting this action, together with interest
- 7 and reasonable attorneys' and experts' fees; and
- 8 j.) Granting such other relief as this Court may deem just and proper under the
- 9 circumstances.

10 JURY DEMAND

11 To the full extent available, Plaintiffs demands a trial by jury.

12

13 Dated: February 18, 2008

Ladva Law Firm

14

15

16 By: 

Ashwin Ladva, Esq.

Attorneys for Plaintiff, Salvatore Temores

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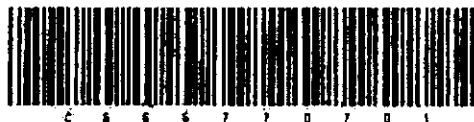
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Contact:	Ashwin Ladva	Contact Tel. No.:	(415) 296-8844
Order Date:	02/27/2008	Client Billing Code:	none
Plaintiff:	Salvadore Temores	Defendant:	Belmont Village, et al.
Document Title:	Civil Case Cover Sheet	Document #:	01
Order Type:	Serve & File	No. of Pages:	2
Special Instructions:			
SOP Service Level:	Standard	Last Day to Serve:	03/27/2008
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Customer Name:	LAW OFFICE OF ASHWIN LADV...	Customer No.:	0013787
Contact:	Ashwin Ladva	Contact Tel. No.:	(415) 296-8844
Order Date:	02/27/2008	Client Billing Code:	none
Plaintiff:	Salvadore Temores	Defendant:	Belmont Village, et al.
Document Title:	Summons	Document #:	02
Order Type:	Serve & File	No. of Pages:	1
Special Instructions:			
SOP Service Level:	Standard	Last Day to Serve:	03/27/2008
On Demand:	No		

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Contact:	Ashwin Ladva	Contact Tel. No.:	(415) 296-8844
Order Date:	02/27/2008	Client Billing Code:	none
Plaintiff:	Salvadore Temores	Defendant:	Belmont Village, et al.
Document Title:	Complaint	Document #:	03
Order Type:	Serve & File	No. of Pages:	16
Special Instructions:			
SOP Service Level:	Standard	Last Day to Serve:	03/27/2008
On Demand:	No		

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ashwin Ladva, 206140 LAW OFFICE OF ASHWIN LADVA 530 Jackson Street 2nd Floor San Francisco, CA 94133 TELEPHONE NO.: (415) 296-8844 ATTORNEY FOR (Name): Plaintiff		FILED POS-010 FOR COURT USE ONLY FEB 28 2008 CHIEF CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA J. Cao-Nguyen
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of Santa Clara County 191 N. First Street San Jose, CA 95113-1090		
PLAINTIFF/PETITIONER: Temores DEFENDANT/RESPONDENT: Belmont Village, et al.		CASE NUMBER: 108CV106332
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.: none

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint

BY FAX

3. a. Party served: Belmont Village Sunnyvale, Inc., a California Corp.
- b. Person Served: CT Corporation - Margaret Wilson - Person authorized to accept service of process
4. Address where the party was served: 818 WEST SEVENTH STREET
LOS ANGELES, CA 90017
5. I served the party
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 2/27/2008 (2) at (time): 3:15 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 - c. on behalf of:

Belmont Village Sunnyvale, Inc., a California Corp.

under: CCP 416.10 (corporation)

7. Person who served papers

- a. Name: Jimmy Lizama
- b. Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947
415-491-0606
- c. Telephone number:
- d. The fee for service was: \$ 14.95
- e. I am:
 - (3) registered California process server.
 - (i) Employee or independent contractor.
 - (ii) Registration No.: 4553
 - (iii) County LOS ANGELES

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.
- Date: 2/28/2008

Jimmy Lizama

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

Form Adopted for Mandatory Use
 Judicial Council of California POS-010
 (Rev. Jan 1, 2007)

Code of Civil Procedure, § 417.10

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3 515 South Flower Street
4 Twenty-Fifth Floor
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9 SHANNON S. SEVEY (SB# 229319)
10 1117 S. California Avenue
11 Palo Alto, CA 94304
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14 Attorneys for Defendant
15 BelmontCorp.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SANTA CLARA

18 SALVADORE TEMORES,

19 Plaintiff,

20 vs.

21 BELMONT VILLAGE SUNNYVALE,
22 INC., a California Corporation,
23 BELMONTCORP, a Maryland
24 Corporation, BELMONT VILLAGE and
25 DOES 1-25, inclusive,

26 Defendants.

CASE NO. 1-08-CV 106332

**NOTICE OF DEPOSITION OF PLAINTIFF
SALVADORE TEMORES**

1 TO PLAINTIFF SALVADORE TEMORES AND TO HIS ATTORNEY OF RECORD,
2 ASHWIN LADVA, ESQ. AND THE LADVA LAW FIRM:

3
4 PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure
5 Section 2025.010, *et. seq.*, Defendant BelmontCorp will take the deposition of Plaintiff Salvadore
6 Temores on April 1, 2008, beginning at 9:30 a.m., at the law offices of Paul, Hastings, Janofsky
7 & Walker LLP, 1117 S. California Avenue, Palo Alto, CA 94304. If the deposition is not
8 completed on April 1, 2008, it will continue from day to day thereafter, Saturdays, Sundays and
9 holidays excepted, until completed.

10
11 The deposition will be taken upon oral examination before a notary public or other
12 person authorized by law to administer oaths and will be recorded stenographically, by Live
13 Notes, a computer interactive, real time system and will be videotaped pursuant to Sections
14 2025.220(a)(5) and 2025.340 of the California Code of Civil Procedure.

15
16 PLEASE TAKE FURTHER NOTICE, pursuant to California Code of Civil
17 Procedure Section 2025.220(a)(4), that Plaintiff is instructed to bring with him to said deposition
18 the categories of documents described in Exhibit "A," attached hereto and incorporated herein by
19 this reference. Alternatively, Plaintiff may comply with this requirement by delivering or mailing
20 the requested documents to Defendant at the address of its attorney, Elena Baca, Esq., Paul
21 Hastings, Janofsky & Walker LLP, 1117 S. California Avenue, Palo Alto, CA 94304, so long as
22 the documents arrive at that address no later than the aforesaid date and time.

1 DATED: March 10, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP
ELENA R. BACA
SHANNON S. SEVEY

2
3
4 By: Shannon Sevey
SHANNON S. SEVEY

5
6 Attorneys for Defendant
BelmontCorp

I.**DEFINITIONS AND INSTRUCTIONS****A. Definitions**

1. As used herein, the words "DOCUMENT" or "DOCUMENTS" mean any kind of written, typewritten, printed, or recorded material whatsoever, including but not limited to, any notes, memoranda, charges, complaints, claims, affidavits, statements, papers, files, forms, data, tapes, cassettes, discs, magnetic cards, printouts, letters, reports, summaries, compilations, chronicles, publications, books, manuals, handbooks, certificates, minutes, agenda, communications, contracts, agreements, telegrams, teletypes, facsimile, records, correspondence, diaries, calendars, appointment books, logs, audio and/or video recordings and transcriptions of recordings, microfilm, microfiche, electronic records or representations of any kind, information stored on computer (including but not limited to electronic mail) or on any type of computer readable storage media and capable of being reproduced by printed representation of any form, whether or not ever printed out or displayed, photographs, pictures, diagrams, or any other writing, however produced or reproduced, and further including, without limitation, originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such documents whether or not used, within the possession, custody, and/or control of Plaintiff, or his agents, attorneys, physicians, psychologists, psychiatrists, counselors, and/or any other persons who may act on her behalf, excepting only those documents that are privileged or otherwise protected from discovery, as to which the claim of privilege or protection is specifically stated by written notice to Defendant.

2. "DEFENDANTS" refers to Defendant BELMONT VILLAGE SUNNYVALE, INC., a California Corporation, BELMONT CORP, a Maryland Corporation, BELMONT VILLAGE and DOES 1-25, inclusive and/or to any past or present officers, directors, employees and/or

1 agents of said named entity and/or all divisions, subsidiaries, parent, affiliated, related or
2 predecessor companies, or any of them.

3
4 3. "TEMORES" or "PLAINTIFF" refers to Plaintiff Salvadore Temores and/or his
5 agents and/or representatives, past or present.

6
7 4. "COMPLAINT" refers to PLAINTIFF's Complaint on file herein.

8
9 5. "COMMUNICATE" and "COMMUNICATIONS" mean and include any meeting,
10 conference, face-to-face conversation, telephone conversation, or conference or communication
11 used by any media, as well as any written, taped, or recorded communication of any kind
12 whatsoever.

13
14 **B. Instructions**

15
16 1. Documents Withheld

17
18 If any document is withheld under a claim of privilege or other protection, so as to
19 aid the Court and the parties hereto to determine the validity of the claim of privilege or other
20 protection, please provide the following information with respect to any such document:

21
22 a. The identity of the person(s) who prepared the document, who signed it, and
23 over whose name it was sent or issued;

24
25 b. The identity of each person(s) to whom the document was directed;

26
27 c. The nature and substance of the document with sufficient particularity to
28 enable the Court and parties hereto to identify the document;

1 d. The date of the document;

2
3 e. The identity of each person(s) who has custody of, or control over, the
4 document and each copy thereof;

5
6 f. The identity of each person to whom copies of the document were furnished;

7
8 g. The number of pages;

9
10 h. The basis on which any privilege or other protection is claimed; and

11
12 i. Whether any non-privileged or non-protected matter is included in the
13 document.

14
15 2. Partial Production

16
17 Whenever you object to a particular request, or portion thereof, you must produce
18 all documents called for which are not subject to that objection. Similarly, wherever a document
19 is not produced in full, please state with particularity the reason or reasons it is not being
20 produced in full, and describe, to the best of your knowledge, information and belief and with as
21 much particularity as possible, those portions of the document that are not produced.

22
23 3. Orderly Response

24
25 Wherever it is reasonably practicable, please produce documents in such manner
26 as will facilitate their identification with the particular request or category of requests to which
27 they are responsive.
28

1 DOL, that in either case, relate in any manner to any and all charges filed with the DOL against
2 DEFENDANTS and/or to any and all matters encompassed by the COMPLAINT

3
4 3. Any and all DOCUMENTS (a) given to or received from the State of California
5 Employment Development Department or the California Unemployment Insurance Appeals
6 Board, or (b) constituting, discussing or otherwise pertaining in any way to correspondence or
7 other written or oral COMMUNICATIONS between PLAINTIFF and said department or board,
8 that, in either case, relate or pertain in any manner to any claim for unemployment benefits,
9 unemployment benefits received, or to any and all matters encompassed by the COMPLAINT
10 herein.

11
12 4. Any and all DOCUMENTS: (a) given to any other local, state or federal agency,
13 office, department, or official, other than those named in Paragraphs 1, 2, and 3 above; and/or (b)
14 constituting, discussing, or otherwise pertaining in any way to correspondence or other written or
15 oral COMMUNICATIONS between PLAINTIFF and any local, state or federal agency, office,
16 department, or official, other than those named in Paragraphs 1, 2, and 3 above, which in either
17 case, relate in any manner to any and all matters encompassed by the COMPLAINT and/or other
18 pleadings herein.

19
20 5. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
21 any violation of the California Labor Code against PLAINTIFF by DEFENDANTS.

22
23 6. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
24 any violation of any California Wage Order against PLAINTIFF by DEFENDANTS.

25
26 7. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
27 any alleged failure by DEFENDANTS to pay wages and/or overtime to PLAINTIFF, as alleged
28 in YOUR cause of action for violation of California Labor Code sections 510 and 204.

1 8. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
2 any alleged failure by DEFENDANTS to pay wages to PLAINTIFF upon discharge or quitting,
3 as alleged in YOUR cause of action for violation of California Labor Code sections 201, 202, and
4 203.

5
6 9. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
7 any alleged failure by DEFENDANTS to afford mandatory breaks or meal periods, as alleged in
8 YOUR cause of action for violation of California Labor Code section 226.7.

9
10 10. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
11 any alleged failure by DEFENDANTS to maintain pay records, as alleged in YOUR cause of
12 action for violation of California Labor Code section 226.

13
14 11. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
15 any alleged failure by DEFENDANTS to make pay records available upon request, as alleged in
16 YOUR cause of action for violation of California Labor Code section 226.

17
18 12. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
19 any alleged unfair business act or practice by DEFENDANT, as alleged in YOUR cause of action
20 for violation of California Business & Professions Code section 17200 *et. seq.*

21
22 13. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
23 the allegations in Paragraphs 8, 9, and 10 of the COMPLAINT, specifically including, but not
24 limited to, DOCUMENTS supporting or relating to the allegations that: "Plaintiff...was denied
25 regular and overtime wages, and meal and rest periods in violation of the Labor Code and
26 Industrial Wage Commission ("IWC") Orders," "CORPORATE DEFENDANTS failed to
27 provide Plaintiff with regular and overtime wages," "CORPORATE DEFENDANTS failed to
28 provide Plaintiff with meal and rest periods," "Defendants' policies and practices toward its

1 employees and Plaintiff violate California Labor Code §§ 510 and 204,” and “Defendants’
2 policies and practices toward its employees violate California Labor Code § 226.7.”
3

4 14. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 8 and 11 of the COMPLAINT, specifically including, but not limited
6 to, DOCUMENTS supporting or relating to the allegations that: “CORPORATE DEFENDANTS
7 fail[ed] to maintain employees’ payroll records, and make those records available to employees
8 for inspection upon request, in violation of California law,” “CORPORATE DEFENDANTS
9 failed to maintain accurate payroll records, and fail to provide Plaintiff with those records for
10 inspection upon request,” and “Defendants’ policies and practices toward its employees violate
11 California Labor Code § 226.”
12

13 15. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
14 the allegations in Paragraph 12 of the COMPLAINT, specifically including, but not limited to,
15 DOCUMENTS supporting or relating to the allegations that: “Defendants routinely required
16 employees to work more than five (5) hours at a time without a break,” “Plaintiff was routinely
17 not permitted to take a one-hour meal period or even a 30-minute meal period, as required by
18 law,” and “Defendants routinely scheduled employees to work consecutive hours (over five)
19 during a given day without interruption.”
20

21 16. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
22 the allegations in Paragraph 13 of the COMPLAINT, specifically including, but not limited to,
23 DOCUMENTS supporting or relating to the allegation that: “Defendants routinely denied regular
24 wages, and overtime wages to Plaintiff working more than eight (8) hours per day and more than
25 forty (40) hours per week. In addition, Defendants routinely failed to timely pay Plaintiff his due
26 wages.”
27
28

1 17. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 14 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that: "Defendants' illegal policy of
4 denying regular and overtime wages, failing to timely pay wages, and forcing employees to
5 forego a meal and rest period also constitute a violation of California's Unfair Competition Law
6 (Business and Professions Code §§ 17200, et seq.), in that Defendant's (sic) policies and practices
7 constitute unlawful, unfair, or fraudulent business acts or practices, including violations of
8 California Labor Code provisions and California IWC Orders."

9
10 18. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
11 the allegations in Paragraph 21 of the COMPLAINT, specifically including, but not limited to,
12 DOCUMENTS supporting or relating to the allegation that: "Plaintiff has worked for Defendants
13 without being paid for all hours worked, regular and overtime."

14
15 19. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
16 the allegations in Paragraph 22 of the COMPLAINT, specifically including, but not limited to,
17 DOCUMENTS supporting or relating to the allegation that: "As a result of CORPORATE
18 DEFENDANTS' violation of statutory duties to comply with statutory wage requirements, []
19 Plaintiff was damaged in an amount above the jurisdictional limits of this Court."

20
21 20. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
22 the allegations in Paragraph 23 of the COMPLAINT, specifically including, but not limited to,
23 DOCUMENTS supporting or relating to the allegation that: Plaintiff is owed wages by
24 "CORPORATE DEFENDANTS."

25
26 21. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
27 the allegations in Paragraphs 25 and 36 of the COMPLAINT, specifically including, but not
28

1 limited to, DOCUMENTS supporting or relating to the allegation that: "Plaintiff has incurred, and
2 will continue to incur attorneys' fees and costs in the prosecution of this action."
3

4 22. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 28 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: "Plaintiff is entitled to unpaid
7 compensation, but to date has not received such compensation," and "As a result of
8 CORPORATE DEFENDANTS' willful conduct in not paying compensation for all hours
9 worked, Plaintiff is entitled to 30 days wages as penalty under Labor Code § 203, together with
10 interest thereon and attorneys' fees and costs."
11

12 23. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
13 the allegations in Paragraph 30 of the COMPLAINT, specifically including, but not limited to,
14 DOCUMENTS supporting or relating to the allegation that: "Plaintiff was covered by the
15 provisions of Industrial Wage Commission ("IWC") Orders, including IWC Orders 1-2001.
16

17 24. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 33 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: "CORPORATE DEFENDANTS
20 routinely failed to provide Plaintiff with a 30-minute unpaid meal period within the first five (5)
21 hours of work in compliance with IWC Orders and Labor Code § 226.7." "Defendants routinely
22 failed to provide Plaintiff with a second 30-minute meal period within the second five (5) hours
23 of work in compliance with IWC Orders and Labor Code § 226.7."
24

25 25. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
26 the allegations in Paragraph 34 of the COMPLAINT, specifically including, but not limited to,
27 DOCUMENTS supporting or relating to the allegation that: "CORPORATE DEFENDANTS
28

1 routinely failed to provide Plaintiff with a 10-minute paid rest period for each four (4) hour period
2 of work, in compliance with IWC Orders and Labor Code § 226.7.”

3
4 26. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 35 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: “CORPORATE DEFENDANTS’
7 policy and practice of denying Plaintiff meal and rest periods constitutes a willful violation of
8 California Labor Code § 226.7.”

9
10 27. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
11 the allegations in Paragraph 38 of the COMPLAINT, specifically including, but not limited to,
12 DOCUMENTS supporting or relating to the allegation that: “CORPORATE DEFENDANTS
13 knowingly and intentionally failed to maintain accurate pay records, and failed to allow current
14 and former employees to inspect pay records upon request, in violation of California Labor Code
15 § 226.”

16
17 28. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 39 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: “As a direct result of CORPORATE
20 DEFENDANTS’ failure, Plaintiff was injured and are (sic) entitled to recover an amount to be
21 proved at trial, of not less than \$750 for each violation.”

22
23 29. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
24 the allegations in Paragraph 43 of the COMPLAINT, specifically including, but not limited to,
25 DOCUMENTS supporting or relating to the allegation that: “Plaintiff has standing to bring this
26 claim [for alleged violation of Business & Professions Code § 17200 *et seq.*] because he is a
27 direct victim of CORPORATE DEFENDANTS’ illegal and unfair business practices, which
28 Defendants engaged in for their sole financial benefit.”

1 30. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 45 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that Plaintiff is entitled to seek "restitution
4 for CORPORATE DEFENDANTS' failure to pay employees regular and overtime wages, and
5 failure to provide meal and rest periods."

6
7 31. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
8 the allegations in Paragraph 47 of the COMPLAINT, specifically including, but not limited to,
9 DOCUMENTS supporting or relating to the allegation that: "The following practices of
10 Defendants, and each of them, are unlawful and unfair business practices under California
11 Business & Professions Code §§ 17200 et seq.: (a) failure to pay all regular and overtime wages,
12 in violation of the California Labor Code and all other applicable laws; (b) failure to provide rest
13 breaks and meal periods pursuant to the California Labor Code and IWC wage orders; (c) failure
14 to maintain accurate pay records, and make those records available for inspection upon request by
15 employees; (d) unjust enrichment due to the failure to pay wages, including overtime wages."

16
17 32. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 48 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: "At all times material to this action,
20 CORPORATE DEFENDANTS' conduct described above is an unfair, unlawful and/or fraudulent
21 business practice in violation of California Business & Professions Code §§ 17200 et seq."

22
23 33. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
24 the allegations in Paragraph 49 of the COMPLAINT, specifically including, but not limited to,
25 DOCUMENTS supporting or relating to the allegation that: "As alleged hereinabove,
26 CORPORATE DEFENDANTS have inequitably and unlawfully conspired, agreed, arranged and
27 combined to violate California labor laws, as alleged herein."

1 34. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 50 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that: "[B]y failing to pay wages to all
4 employees at Defendants' business, Defendants have engaged in business within the State of
5 California in a manner that injured competitors, lead (sic) to misrepresentations to the public
6 about the manner in which Defendants engaged in business, and/or destroyed competition in
7 violation of Business & Professions Code § 17043," and "Defendants engaged in the acts and
8 omissions heretofore alleged for the purpose of profiting from lower labor costs, and obtaining an
9 unlawful or unfair advantage, all in a scheme to engage in unfair competition, at the expense of
10 their employees and to the detriment of public policy for the lawful employment of employees."

11
12 35. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
13 the allegations in Paragraph 52 of the COMPLAINT, specifically including, but not limited to,
14 DOCUMENTS supporting or relating to the allegation that: "As a direct and proximate result of
15 the unfair, unlawful, and/or fraudulent business practices alleged herein, Plaintiff has been denied
16 due wages, both regular and overtime, as well as meal and rest periods, all to their (sic) detriment
17 and all to CORPORATE DEFENDANTS' illegal economic advantage."

18
19 36. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
20 the allegations in Paragraph 54 of the COMPLAINT, specifically including, but not limited to,
21 DOCUMENTS supporting or relating to the allegation that there exist, and that Plaintiff is
22 entitled to seek restitution for, "unpaid wages owing to [PLAINTIFF] and members of the general
23 public, according to proof, that the Defendants have enjoyed as a result of the unlawful business
24 practices."

25
26 37. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
27 the allegations in Paragraph 57 of the COMPLAINT, specifically including, but not limited to,
28

1 DOCUMENTS supporting or relating to the allegation that: "There is a financial burden incurred
2 in pursuing this action which would be unjust to place on Plaintiff."
3

4 38. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 58 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: "Unless equitable relief is granted,
7 Plaintiff and others similarly situated will continue to be subjected to Defendants' illegal
8 conduct."
9

10 39. Any and all DOCUMENTS that evidence, relate or otherwise pertain to conversations
11 or other COMMUNICATIONS with, or statements by DEFENDANTS, or any present or former
12 employee, officer, or agent of DEFENDANTS, establishing, supporting, refuting or relating in
13 any manner to any alleged failure to pay regular or overtime wages, failure to provide or allow
14 meal and/or rest periods, failure to maintain and/or permit inspection of payroll records, violation
15 of the California Labor Code, violation of any Industrial Wage Commission Order(s), violation of
16 Business & Professions Code § 17200 *et seq.*, or any other wrongful conduct by DEFENDANT,
17 its officers, employees or agents, or any of them, and/or relating in any manner to any of the facts
18 that PLAINTIFF contends establishes any claim, and/or relating in any manner to any and all
19 other matters encompassed by the COMPLAINT or other pleadings herein.
20

21 40. Any and all DOCUMENTS that constitute, relate to, or in any manner pertain to notes
22 or other writings made by PLAINTIFF for his own use that establish, support, refute or relate in
23 any manner to any alleged failure to pay regular or overtime wages, failure to provide or allow
24 meal and/or rest periods, failure to maintain and/or permit inspection of payroll records, violation
25 of the California Labor Code, violation of any Industrial Wage Commission Order(s), violation of
26 Business & Professions Code § 17200 *et seq.*, or any other alleged wrongful conduct by
27 DEFENDANT, its officers, employees or agents, or any of them, and/or relate in any manner to,
28

1 any of the facts that PLAINTIFF contends establish any claim, and/or relate in any manner to any
2 and all other matters encompassed by the COMPLAINT or other pleadings herein.

3
4 41. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any and all
5 employment of PLAINTIFF by any employer or self-employment prior to the employment of
6 PLAINTIFF by DEFENDANT, including, but not limited to, any and all DOCUMENTS relating
7 to resumes and/or other records of employment history; job applications and related
8 documentation; negotiations regarding any aspect of employment; offers of employment; terms,
9 benefits and conditions of employment; employment contracts, if any; at-will employment
10 agreements; job title or status; applications for changes in job status; promotions; transfers; job
11 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
12 in job assignments and/or responsibilities, and placements and responses to said requests;
13 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
14 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
15 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
16 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
17 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
18 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
19 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
20 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
21 potential termination and/or other separation of employment; termination and/or other separation
22 from employment; employee handbooks; and employer policies and procedures.

23
24 42. Any and all other DOCUMENTS that evidence, relate or refer to any and all
25 employment of PLAINTIFF by any employer or self-employment during PLAINTIFF's
26 employment by DEFENDANT, including, but not limited to, any and all DOCUMENTS relating
27 to resumes and/or other records of employment history; job applications and related
28 documentation; negotiations regarding any aspect of employment; offers of employment; terms,

1 benefits and conditions of employment; employment contracts, if any; at-will employment
2 agreements; job title or status; applications for changes in job status; promotions; transfers; job
3 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
4 in job assignments and/or responsibilities, and placements and responses to said requests;
5 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
6 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
7 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
8 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
9 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
10 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
11 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
12 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
13 potential termination and/or other separation of employment; termination and/or other separation
14 from employment; employee handbooks; and employer policies and procedures.

15
16 43. Any and all other DOCUMENTS that relate or refer to the employment of
17 PLAINTIFF by any DEFENDANT or related entity, including, but not limited to, any and all
18 DOCUMENTS relating to resumes and/or other records of employment history; job applications
19 and related documentation; negotiations regarding any aspect of employment; offers of
20 employment; terms, benefits and conditions of employment; employment contracts, if any; at-will
21 employment agreements; job title or status; applications for changes in job status; promotions;
22 transfers; job requirements; job assignments and/or responsibilities; requests for promotions,
23 transfers, changes in job assignments and/or responsibilities, and placements and responses to
24 said requests; evaluations and/or reviews of job performance; reprimands, warnings, discipline;
25 complaints; responses to complaints; grievances, notes of grievance meetings or hearings, and
26 results of grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary,
27 wages, earnings, compensation, commissions, bonuses, or any other form of income or
28 remuneration; changes in rates of pay, salary, wages, earnings, compensation, commissions,

1 bonuses, or in any other form of income or remuneration; offers of benefits to be paid for (in
2 whole or in part) or provided by any DEFENDANT or related entity regardless of whether those
3 benefits were actually obtained; benefits statements; insurance-related documents; pension rights
4 and benefits; seniority; threatened or potential termination and/or other separation of
5 employment; termination and/or other separation from employment; employee handbooks; and
6 employer policies and procedures.

7
8 44. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to the hours
9 PLAINTIFF worked for DEFENDANTS while employed by DEFENDANTS.

10
11 45. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any bonus
12 PLAINTIFF requested and/or received from DEFENDANTS and/or any related or affiliated
13 entity, including without limitation, any documents relating to the work PLAINTIFF performed
14 to be eligible for any bonus, any documents or information submitted by PLAINTIFF pursuant to
15 his request for and/or receipt of any bonus, and any payroll documents and/or tax submissions
16 reflecting receipt of any bonus.

17
18 46. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any
19 severance, separation, and/or settlement agreement and/or release entered into between
20 PLAINTIFF and DEFENDANTS and/or any related or affiliated entity, whether oral or written.

21
22 47. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any
23 amounts paid to PLAINTIFF under any severance, separation, and/or settlement agreement and/or
24 release entered into between PLAINTIFF and DEFENDANTS and/or any related or affiliated
25 entity, whether oral or written

26
27 48. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any or all
28 employment of PLAINTIFF by any employer or self-employment subsequent to the employment

1 of PLAINTIFF by DEFENDANT, including, but not limited to, any and all DOCUMENTS
2 relating to resumes and/or other records of employment history; job applications and related
3 documentation; negotiations regarding any aspect of employment; offers of employment; terms,
4 benefits and conditions of employment; employment contracts, if any; at-will employment
5 agreements; job title or status; applications for changes in job status; promotions; transfers; job
6 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
7 in job assignments and/or responsibilities, and placements and responses to said requests;
8 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
9 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
10 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
11 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
12 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
13 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
14 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
15 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
16 potential termination and/or other separation of employment; termination and/or other separation
17 from employment; employee handbooks; and employer policies and procedures.

18
19 49. The Federal and State Income Tax Returns, W-2 forms and all other DOCUMENTS
20 that evidence, relate or refer to the amount and source of income earned or received by
21 PLAINTIFF for the years 2004 to the present, including, but not limited to, monies received from
22 self-employment, other employers, and/or the federal, state or local government.

23
24 50. Any and all DOCUMENTS that in any way discuss, relate or otherwise pertain to any
25 other lawsuits filed by PLAINTIFF or filed by others on PLAINTIFF's behalf, or any other
26 complaints, charges, grievances or other legal or equitable claims made by PLAINTIFF, or made
27 by others on PLAINTIFF's behalf, against an employer other than DEFENDANT.

1 51. Any and all DOCUMENTS that refer or relate to any discussion(s) that PLAINTIFF
2 has had with any individual concerning (a) the fact that PLAINTIFF is suing DEFENDANTS;
3 and/or (b) PLAINTIFF's claim or belief that DEFENDANTS, or any of its partners, affiliates,
4 related entities, employees or agents, harmed PLAINTIFF or any other person in any way.

5
6 52. All personal or business calendars, journals, diaries, notebooks, logs, appointment
7 books or the like, possessed or maintained by, or on behalf of, PLAINTIFF, from 2004 to the
8 present.

9
10 53. All statements or invoices, from 2004 through the present, relating to any credit card
11 and/or ATM card held by PLAINTIFF that demonstrate meal or other food charges on any
12 claimed workday.

13
14 54. All statements or invoices, from 2004 through the present, relating to any cellular
15 telephone maintained by PLAINTIFF.

16
17 55. Any and all DOCUMENTS that in any manner constitute, discuss or otherwise relate
18 to any notes, writings, or other DOCUMENTS made by any person other than PLAINTIFF that
19 relate in any manner to PLAINTIFF's employment with DEFENDANTS and/or any affiliated or
20 related entity, and/or to the allegations in or any and all other matters encompassed by the
21 COMPLAINT or other pleadings herein.

22
23 56. Any and all tape or video or other audio recordings containing any remarks,
24 conversation or speech by or about any past or present agent, employee or representative of
25 DEFENDANTS and/or any affiliated or related entity.

1 57. Any and all DOCUMENTS not otherwise identified or otherwise referred to herein
2 that support or pertain in any way to the allegations in or any and all other matters encompassed
3 by the COMPLAINT or other pleadings herein.
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14 Attorneys for Defendant
15 BelmontCorp

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18
19 COUNTY OF SANTA CLARA
20

21 SALVADORE TEMORES,

22 Plaintiff,

23 vs.

24 BELMONT VILLAGE SUNNYVALE,
25 INC., a California Corporation,
26 BELMONTCORP, a Maryland
27 Corporation, BELMONT VILLAGE and
28 DOES 1-25, inclusive,

Defendants.

CASE NO. 1-08-CV 106332

**DEFENDANT BELMONTCORP'S FIRST
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFF
SALVADORE TEMORES**

PROPOUNDING PARTY: DEFENDANT BELMONTCORP

RESPONDING PARTY: PLAINTIFF SALVADORE TEMORES

SET NO.: ONE

1 TO PLAINTIFF SALVADORE TEMORES AND TO HIS ATTORNEY OF RECORD,
2 ASHWIN LADVA, ESQ. AND THE LADVA LAW FIRM:
3

4 PLEASE TAKE NOTICE that pursuant to Section 2031.010 *et. seq.*, of the
5 California Code of Civil Procedure, Plaintiff Salvadore Temores ("Plaintiff") is hereby requested
6 to produce for inspection and copying the documents and tangible things described hereinbelow
7 on April 9, 2008 at 5:00 p.m., at the law offices of Paul, Hastings, Janofsky & Walker LLP, 515
8 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071-2228. Plaintiff may comply
9 with this Request by transmitting the documents and physical evidence by mail or overnight
10 delivery service so long as they arrive at the designated place by the aforestated date and time
11 (attention: Elena Baca, Esq.).
12

13 In accordance with Section 2031.210 *et. seq.*, of the California Code of Civil
14 Procedure, Plaintiff also must serve within 30 days after service of this Request a verified written
15 response, responding separately to each item or category of item included in the Request by a
16 statement that Plaintiff will comply with the particular request for inspection, a representation that
17 Plaintiff lacks the ability to comply with the particular request, or an objection to the particular
18 request. NOTICE: ANY FAILURE TO SERVE A TIMELY WRITTEN VERIFIED
19 RESPONSE IN ACCORDANCE WITH SECTION 2031.210 WILL CONSTITUTE A WAIVER
20 BY PLAINTIFF OF ANY OBJECTION TO THIS REQUEST, INCLUDING ONE BASED ON
21 PRIVILEGE OR WORK PRODUCT.
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I.

DEFINITIONS AND INSTRUCTIONSA. Definitions

1. As used herein, the words "DOCUMENT" or "DOCUMENTS" mean any kind of written, typewritten, printed, or recorded material whatsoever, including but not limited to, any notes, memoranda, charges, complaints, claims, affidavits, statements, papers, files, forms, data, tapes, cassettes, discs, magnetic cards, printouts, letters, reports, summaries, compilations, chronicles, publications, books, manuals, handbooks, certificates, minutes, agenda, communications, contracts, agreements, telegrams, teletypes, facsimile, records, correspondence, diaries, calendars, appointment books, logs, audio and/or video recordings and transcriptions of recordings, microfilm, microfiche, electronic records or representations of any kind, information stored on computer (including but not limited to electronic mail) or on any type of computer readable storage media and capable of being reproduced by printed representation of any form, whether or not ever printed out or displayed, photographs, pictures, diagrams, or any other writing, however produced or reproduced, and further including, without limitation, originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such documents whether or not used, within the possession, custody, and/or control of Plaintiff, or his agents, attorneys, physicians, psychologists, psychiatrists, counselors, and/or any other persons who may act on her behalf, excepting only those documents that are privileged or otherwise protected from discovery, as to which the claim of privilege or protection is specifically stated by written notice to Defendant.

2. "DEFENDANTS" refers to Defendant BELMONT VILLAGE SUNNYVALE, INC., a California Corporation, BELMONTCORP, a Maryland Corporation, BELMONT VILLAGE and DOES 1-25, inclusive and/or to any past or present officers, directors, employees and/or

1 agents of said named entity and/or all divisions, subsidiaries, parent, affiliated, related or
2 predecessor companies, or any of them.

3
4 3. "TEMORES" or "PLAINTIFF" refers to Plaintiff Salvadore Temores and/or his
5 agents and/or representatives, past or present.

6
7 4. "COMPLAINT" refers to PLAINTIFF's Complaint on file herein.

8
9 5. "COMMUNICATE" and "COMMUNICATIONS" mean and include any meeting,
10 conference, face-to-face conversation, telephone conversation, or conference or communication
11 used by any media, as well as any written, taped, or recorded communication of any kind
12 whatsoever.

13
14 B. Instructions

15
16 1. Documents Withheld

17
18 If any document is withheld under a claim of privilege or other protection, so as to
19 aid the Court and the parties hereto to determine the validity of the claim of privilege or other
20 protection, please provide the following information with respect to any such document:

21
22 a. The identity of the person(s) who prepared the document, who signed it, and
23 over whose name it was sent or issued;

24
25 b. The identity of each person(s) to whom the document was directed;

26
27 c. The nature and substance of the document with sufficient particularity to
28 enable the Court and parties hereto to identify the document;

1 d. The date of the document;

2
3 e. The identity of each person(s) who has custody of, or control over, the
4 document and each copy thereof;

5
6 f. The identity of each person to whom copies of the document were furnished;

7
8 g. The number of pages;

9
10 h. The basis on which any privilege or other protection is claimed; and

11
12 i. Whether any non-privileged or non-protected matter is included in the
13 document.

14
15 2. Partial Production

16
17 Whenever you object to a particular request, or portion thereof, you must produce
18 all documents called for which are not subject to that objection. Similarly, wherever a document
19 is not produced in full, please state with particularity the reason or reasons it is not being
20 produced in full, and describe, to the best of your knowledge, information and belief and with as
21 much particularity as possible, those portions of the document that are not produced.

22
23 3. Orderly Response

24
25 Wherever it is reasonably practicable, please produce documents in such manner
26 as will facilitate their identification with the particular request or category of requests to which
27 they are responsive.

4. Construction of "And" and "Or"

As used herein, the words “and” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other wherever such dual construction will serve to bring within the scope of this Request any documents that would otherwise not be brought within its scope.

5. Construction of the Singular and Plural Forms

As used herein, the singular form shall include the plural and vice versa whenever such dual construction will serve to bring within the scope of this Request any documents that would otherwise not be brought within its scope.

II.

DOCUMENTS REQUIRED TO BE PRODUCED

1. Any and all DOCUMENTS: (a) given to or received from the California Labor and Workforce Development Agency (the "LWDA"), including, but not limited to, the LWDA's Division of Labor Standards Enforcement; and/or (b) constituting, discussing, or otherwise pertaining in any way to correspondence or other written or oral COMMUNICATIONS between PLAINTIFF and the LWDA, that in either case, relate in any manner to any and all complaints filed with the LWDA against DEFENDANTS and/or to any and all matters encompassed by the COMPLAINT.

2. Any and all DOCUMENTS: (a) given to or received from the United States Department of Labor (the “DOL”), including, but not limited to, the DOL’s Wage and Hour Division; and/or (b) constituting, discussing, or otherwise pertaining in any way to correspondence or other written or oral COMMUNICATIONS between PLAINTIFF and the

1 DOL, that in either case, relate in any manner to any and all charges filed with the DOL against
2 DEFENDANTS and/or to any and all matters encompassed by the COMPLAINT
3

4 3. Any and all DOCUMENTS (a) given to or received from the State of California
5 Employment Development Department or the California Unemployment Insurance Appeals
6 Board, or (b) constituting, discussing or otherwise pertaining in any way to correspondence or
7 other written or oral COMMUNICATIONS between PLAINTIFF and said department or board,
8 that, in either case, relate or pertain in any manner to any claim for unemployment benefits,
9 unemployment benefits received, or to any and all matters encompassed by the COMPLAINT
10 herein.
11

12 4. Any and all DOCUMENTS: (a) given to any other local, state or federal agency,
13 office, department, or official, other than those named in Paragraphs 1, 2, and 3 above; and/or (b)
14 constituting, discussing, or otherwise pertaining in any way to correspondence or other written or
15 oral COMMUNICATIONS between PLAINTIFF and any local, state or federal agency, office,
16 department, or official, other than those named in Paragraphs 1, 2, and 3 above, which in either
17 case, relate in any manner to any and all matters encompassed by the COMPLAINT and/or other
18 pleadings herein.
19

20 5. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
21 any violation of the California Labor Code against PLAINTIFF by DEFENDANTS.
22

23 6. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
24 any violation of any California Wage Order against PLAINTIFF by DEFENDANTS.
25

26 7. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
27 any alleged failure by DEFENDANTS to pay wages and/or overtime to PLAINTIFF, as alleged
28 in YOUR cause of action for violation of California Labor Code sections 510 and 204.

1 8. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
2 any alleged failure by DEFENDANTS to pay wages to PLAINTIFF upon discharge or quitting,
3 as alleged in YOUR cause of action for violation of California Labor Code sections 201, 202, and
4 203.

5
6 9. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
7 any alleged failure by DEFENDANTS to afford mandatory breaks or meal periods, as alleged in
8 YOUR cause of action for violation of California Labor Code section 226.7.

9
10 10. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
11 any alleged failure by DEFENDANTS to maintain pay records, as alleged in YOUR cause of
12 action for violation of California Labor Code section 226.

13
14 11. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
15 any alleged failure by DEFENDANTS to make pay records available upon request, as alleged in
16 YOUR cause of action for violation of California Labor Code section 226.

17
18 12. Any and all DOCUMENTS that constitute, evidence, relate to or otherwise pertain to
19 any alleged unfair business act or practice by DEFENDANT, as alleged in YOUR cause of action
20 for violation of California Business & Professions Code section 17200 *et. seq.*

21
22 13. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
23 the allegations in Paragraphs 8, 9, and 10 of the COMPLAINT, specifically including, but not
24 limited to, DOCUMENTS supporting or relating to the allegations that: "Plaintiff...was denied
25 regular and overtime wages, and meal and rest periods in violation of the Labor Code and
26 Industrial Wage Commission ("IWC") Orders," "CORPORATE DEFENDANTS failed to
27 provide Plaintiff with regular and overtime wages," "CORPORATE DEFENDANTS failed to
28 provide Plaintiff with meal and rest periods," "Defendants' policies and practices toward its
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1 employees and Plaintiff violate California Labor Code §§ 510 and 204,” and “Defendants’
2 policies and practices toward its employees violate California Labor Code § 226.7.”

3
4 14. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 8 and 11 of the COMPLAINT, specifically including, but not limited
6 to, DOCUMENTS supporting or relating to the allegations that: “CORPORATE DEFENDANTS
7 fail[ed] to maintain employees’ payroll records, and make those records available to employees
8 for inspection upon request, in violation of California law,” “CORPORATE DEFENDANTS
9 failed to maintain accurate payroll records, and fail to provide Plaintiff with those records for
10 inspection upon request,” and “Defendants’ policies and practices toward its employees violate
11 California Labor Code § 226.”

12
13 15. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
14 the allegations in Paragraph 12 of the COMPLAINT, specifically including, but not limited to,
15 DOCUMENTS supporting or relating to the allegations that: “Defendants routinely required
16 employees to work more than five (5) hours at a time without a break,” “Plaintiff was routinely
17 not permitted to take a one-hour meal period or even a 30-minute meal period, as required by
18 law,” and “Defendants routinely scheduled employees to work consecutive hours (over five)
19 during a given day without interruption.”

20
21 16. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
22 the allegations in Paragraph 13 of the COMPLAINT, specifically including, but not limited to,
23 DOCUMENTS supporting or relating to the allegation that: “Defendants routinely denied regular
24 wages, and overtime wages to Plaintiff working more than eight (8) hours per day and more than
25 forty (40) hours per week. In addition, Defendants routinely failed to timely pay Plaintiff his due
26 wages.”

1 17. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 14 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that: "Defendants' illegal policy of
4 denying regular and overtime wages, failing to timely pay wages, and forcing employees to
5 forego a meal and rest period also constitute a violation of California's Unfair Competition Law
6 (Business and Professions Code §§ 17200, et seq.), in that Defendant's (sic) policies and practices
7 constitute unlawful, unfair, or fraudulent business acts or practices, including violations of
8 California Labor Code provisions and California IWC Orders."

9
10 18. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
11 the allegations in Paragraph 21 of the COMPLAINT, specifically including, but not limited to,
12 DOCUMENTS supporting or relating to the allegation that: "Plaintiff has worked for Defendants
13 without being paid for all hours worked, regular and overtime."

14
15 19. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
16 the allegations in Paragraph 22 of the COMPLAINT, specifically including, but not limited to,
17 DOCUMENTS supporting or relating to the allegation that: "As a result of CORPORATE
18 DEFENDANTS' violation of statutory duties to comply with statutory wage requirements, []
19 Plaintiff was damaged in an amount above the jurisdictional limits of this Court."

20
21 20. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
22 the allegations in Paragraph 23 of the COMPLAINT, specifically including, but not limited to,
23 DOCUMENTS supporting or relating to the allegation that: Plaintiff is owed wages by
24 "CORPORATE DEFENDANTS."

25
26 21. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
27 the allegations in Paragraphs 25 and 36 of the COMPLAINT, specifically including, but not
28

1 limited to, DOCUMENTS supporting or relating to the allegation that: "Plaintiff has incurred, and
2 will continue to incur attorneys' fees and costs in the prosecution of this action."

3
4 22. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 28 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: "Plaintiff is entitled to unpaid
7 compensation, but to date has not received such compensation," and "As a result of
8 CORPORATE DEFENDANTS' willful conduct in not paying compensation for all hours
9 worked, Plaintiff is entitled to 30 days wages as penalty under Labor Code § 203, together with
10 interest thereon and attorneys' fees and costs."

11
12 23. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
13 the allegations in Paragraph 30 of the COMPLAINT, specifically including, but not limited to,
14 DOCUMENTS supporting or relating to the allegation that: "Plaintiff was covered by the
15 provisions of Industrial Wage Commission ("IWC") Orders, including IWC Orders 1-2001.

16
17 24. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 33 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: "CORPORATE DEFENDANTS
20 routinely failed to provide Plaintiff with a 30-minute unpaid meal period within the first five (5)
21 hours of work in compliance with IWC Orders and Labor Code § 226.7." "Defendants routinely
22 failed to provide Plaintiff with a second 30-minute meal period within the second five (5) hours
23 of work in compliance with IWC Orders and Labor Code § 226.7."

24
25 25. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
26 the allegations in Paragraph 34 of the COMPLAINT, specifically including, but not limited to,
27 DOCUMENTS supporting or relating to the allegation that: "CORPORATE DEFENDANTS

1 routinely failed to provide Plaintiff with a 10-minute paid rest period for each four (4) hour period
2 of work, in compliance with IWC Orders and Labor Code § 226.7.”

3
4 26. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 35 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: “CORPORATE DEFENDANTS’
7 policy and practice of denying Plaintiff meal and rest periods constitutes a willful violation of
8 California Labor Code § 226.7.”

9
10 27. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
11 the allegations in Paragraph 38 of the COMPLAINT, specifically including, but not limited to,
12 DOCUMENTS supporting or relating to the allegation that: “CORPORATE DEFENDANTS
13 knowingly and intentionally failed to maintain accurate pay records, and failed to allow current
14 and former employees to inspect pay records upon request, in violation of California Labor Code
15 § 226.”

16
17 28. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 39 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: “As a direct result of CORPORATE
20 DEFENDANTS’ failure, Plaintiff was injured and are (sic) entitled to recover an amount to be
21 proved at trial, of not less than \$750 for each violation.”

22
23 29. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
24 the allegations in Paragraph 43 of the COMPLAINT, specifically including, but not limited to,
25 DOCUMENTS supporting or relating to the allegation that: “Plaintiff has standing to bring this
26 claim [for alleged violation of Business & Professions Code § 17200 *et seq.*] because he is a
27 direct victim of CORPORATE DEFENDANTS’ illegal and unfair business practices, which
28 Defendants engaged in for their sole financial benefit.”

1 30. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 45 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that Plaintiff is entitled to seek "restitution
4 for CORPORATE DEFENDANTS' failure to pay employees regular and overtime wages, and
5 failure to provide meal and rest periods."

6
7 31. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
8 the allegations in Paragraph 47 of the COMPLAINT, specifically including, but not limited to,
9 DOCUMENTS supporting or relating to the allegation that: "The following practices of
10 Defendants, and each of them, are unlawful and unfair business practices under California
11 Business & Professions Code §§ 17200 et seq.: (a) failure to pay all regular and overtime wages,
12 in violation of the California Labor Code and all other applicable laws; (b) failure to provide rest
13 breaks and meal periods pursuant to the California Labor Code and IWC wage orders; (c) failure
14 to maintain accurate pay records, and make those records available for inspection upon request by
15 employees; (d) unjust enrichment due to the failure to pay wages, including overtime wages."

16
17 32. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
18 the allegations in Paragraph 48 of the COMPLAINT, specifically including, but not limited to,
19 DOCUMENTS supporting or relating to the allegation that: "At all times material to this action,
20 CORPORATE DEFENDANTS' conduct described above is an unfair, unlawful and/or fraudulent
21 business practice in violation of California Business & Professions Code §§ 17200 et seq."

22
23 33. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
24 the allegations in Paragraph 49 of the COMPLAINT, specifically including, but not limited to,
25 DOCUMENTS supporting or relating to the allegation that: "As alleged hereinabove,
26 CORPORATE DEFENDANTS have inequitably and unlawfully conspired, agreed, arranged and
27 combined to violate California labor laws, as alleged herein."

1 34. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
2 the allegations in Paragraph 50 of the COMPLAINT, specifically including, but not limited to,
3 DOCUMENTS supporting or relating to the allegation that: "[B]y failing to pay wages to all
4 employees at Defendants' business, Defendants have engaged in business within the State of
5 California in a manner that injured competitors, lead (sic) to misrepresentations to the public
6 about the manner in which Defendants engaged in business, and/or destroyed competition in
7 violation of Business & Professions Code § 17043," and "Defendants engaged in the acts and
8 omissions heretofore alleged for the purpose of profiting from lower labor costs, and obtaining an
9 unlawful or unfair advantage, all in a scheme to engage in unfair competition, at the expense of
10 their employees and to the detriment of public policy for the lawful employment of employees."

11
12 35. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
13 the allegations in Paragraph 52 of the COMPLAINT, specifically including, but not limited to,
14 DOCUMENTS supporting or relating to the allegation that: "As a direct and proximate result of
15 the unfair, unlawful, and/or fraudulent business practices alleged herein, Plaintiff has been denied
16 due wages, both regular and overtime, as well as meal and rest periods, all to their (sic) detriment
17 and all to CORPORATE DEFENDANTS' illegal economic advantage."

18
19 36. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
20 the allegations in Paragraph 54 of the COMPLAINT, specifically including, but not limited to,
21 DOCUMENTS supporting or relating to the allegation that there exist, and that Plaintiff is
22 entitled to seek restitution for, "unpaid wages owing to [PLAINTIFF] and members of the general
23 public, according to proof, that the Defendants have enjoyed as a result of the unlawful business
24 practices."

25
26 37. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
27 the allegations in Paragraph 57 of the COMPLAINT, specifically including, but not limited to,
28

1 DOCUMENTS supporting or relating to the allegation that: "There is a financial burden incurred
2 in pursuing this action which would be unjust to place on Plaintiff."
3

4 38. Any and all DOCUMENTS which evidence, relate, pertain to, or otherwise support
5 the allegations in Paragraph 58 of the COMPLAINT, specifically including, but not limited to,
6 DOCUMENTS supporting or relating to the allegation that: "Unless equitable relief is granted,
7 Plaintiff and others similarly situated will continue to be subjected to Defendants' illegal
8 conduct."
9

10 39. Any and all DOCUMENTS that evidence, relate or otherwise pertain to conversations
11 or other COMMUNICATIONS with, or statements by DEFENDANTS, or any present or former
12 employee, officer, or agent of DEFENDANTS, establishing, supporting, refuting or relating in
13 any manner to any alleged failure to pay regular or overtime wages, failure to provide or allow
14 meal and/or rest periods, failure to maintain and/or permit inspection of payroll records, violation
15 of the California Labor Code, violation of any Industrial Wage Commission Order(s), violation of
16 Business & Professions Code § 17200 *et seq.*, or any other wrongful conduct by DEFENDANT,
17 its officers, employees or agents, or any of them, and/or relating in any manner to any of the facts
18 that PLAINTIFF contends establishes any claim, and/or relating in any manner to any and all
19 other matters encompassed by the COMPLAINT or other pleadings herein.
20

21 40. Any and all DOCUMENTS that constitute, relate to, or in any manner pertain to notes
22 or other writings made by PLAINTIFF for his own use that establish, support, refute or relate in
23 any manner to any alleged failure to pay regular or overtime wages, failure to provide or allow
24 meal and/or rest periods, failure to maintain and/or permit inspection of payroll records, violation
25 of the California Labor Code, violation of any Industrial Wage Commission Order(s), violation of
26 Business & Professions Code § 17200 *et seq.*, or any other alleged wrongful conduct by
27 DEFENDANT, its officers, employees or agents, or any of them, and/or relate in any manner to
28

1 any of the facts that PLAINTIFF contends establish any claim, and/or relate in any manner to any
2 and all other matters encompassed by the COMPLAINT or other pleadings herein.

3
4 41. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any and all
5 employment of PLAINTIFF by any employer or self-employment prior to the employment of
6 PLAINTIFF by DEFENDANT, including, but not limited to, any and all DOCUMENTS relating
7 to resumes and/or other records of employment history; job applications and related
8 documentation; negotiations regarding any aspect of employment; offers of employment; terms,
9 benefits and conditions of employment; employment contracts, if any; at-will employment
10 agreements; job title or status; applications for changes in job status; promotions; transfers; job
11 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
12 in job assignments and/or responsibilities, and placements and responses to said requests;
13 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
14 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
15 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
16 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
17 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
18 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
19 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
20 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
21 potential termination and/or other separation of employment; termination and/or other separation
22 from employment; employee handbooks; and employer policies and procedures.

23
24 42. Any and all other DOCUMENTS that evidence, relate or refer to any and all
25 employment of PLAINTIFF by any employer or self-employment during PLAINTIFF's
26 employment by DEFENDANT, including, but not limited to, any and all DOCUMENTS relating
27 to resumes and/or other records of employment history; job applications and related
28 documentation; negotiations regarding any aspect of employment; offers of employment; terms,

1 benefits and conditions of employment; employment contracts, if any; at-will employment
2 agreements; job title or status; applications for changes in job status; promotions; transfers; job
3 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
4 in job assignments and/or responsibilities, and placements and responses to said requests;
5 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
6 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
7 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
8 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
9 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
10 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
11 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
12 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
13 potential termination and/or other separation of employment; termination and/or other separation
14 from employment; employee handbooks; and employer policies and procedures.

15
16 43. Any and all other DOCUMENTS that relate or refer to the employment of
17 PLAINTIFF by any DEFENDANT or related entity, including, but not limited to, any and all
18 DOCUMENTS relating to resumes and/or other records of employment history; job applications
19 and related documentation; negotiations regarding any aspect of employment; offers of
20 employment; terms, benefits and conditions of employment; employment contracts, if any; at-will
21 employment agreements; job title or status; applications for changes in job status; promotions;
22 transfers; job requirements; job assignments and/or responsibilities; requests for promotions,
23 transfers, changes in job assignments and/or responsibilities, and placements and responses to
24 said requests; evaluations and/or reviews of job performance; reprimands, warnings, discipline;
25 complaints; responses to complaints; grievances, notes of grievance meetings or hearings, and
26 results of grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary,
27 wages, earnings, compensation, commissions, bonuses, or any other form of income or
28 remuneration; changes in rates of pay, salary, wages, earnings, compensation, commissions,

1 bonuses, or in any other form of income or remuneration; offers of benefits to be paid for (in
2 whole or in part) or provided by any DEFENDANT or related entity regardless of whether those
3 benefits were actually obtained; benefits statements; insurance-related documents; pension rights
4 and benefits; seniority; threatened or potential termination and/or other separation of
5 employment; termination and/or other separation from employment; employee handbooks; and
6 employer policies and procedures.

7
8 44. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to the hours
9 PLAINTIFF worked for DEFENDANTS while employed by DEFENDANTS.
10

11 45. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any bonus
12 PLAINTIFF requested and/or received from DEFENDANTS and/or any related or affiliated
13 entity, including without limitation, any documents relating to the work PLAINTIFF performed
14 to be eligible for any bonus, any documents or information submitted by PLAINTIFF pursuant to
15 his request for and/or receipt of any bonus, and any payroll documents and/or tax submissions
16 reflecting receipt of any bonus.
17

18 46. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any
19 severance, separation, and/or settlement agreement and/or release entered into between
20 PLAINTIFF and DEFENDANTS and/or any related or affiliated entity, whether oral or written.
21

22 47. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any
23 amounts paid to PLAINTIFF under any severance, separation, and/or settlement agreement and/or
24 release entered into between PLAINTIFF and DEFENDANTS and/or any related or affiliated
25 entity, whether oral or written
26

27 48. Any and all DOCUMENTS that evidence, relate to or otherwise pertain to any or all
28 employment of PLAINTIFF by any employer or self-employment subsequent to the employment

1 of PLAINTIFF by DEFENDANT, including, but not limited to, any and all DOCUMENTS
2 relating to resumes and/or other records of employment history; job applications and related
3 documentation; negotiations regarding any aspect of employment; offers of employment; terms,
4 benefits and conditions of employment; employment contracts, if any; at-will employment
5 agreements; job title or status; applications for changes in job status; promotions; transfers; job
6 requirements; job assignments and/or responsibilities; requests for promotions, transfers, changes
7 in job assignments and/or responsibilities, and placements and responses to said requests;
8 evaluations and/or reviews of job performance; reprimands, warnings, discipline; complaints;
9 responses to complaints; grievances, notes of grievance meetings or hearings, and results of
10 grievance proceedings; investigations of PLAINTIFF's conduct; rates of pay, salary, wages,
11 earnings, compensation, commissions, bonuses, or any other form of income or remuneration;
12 changes in rates of pay, salary, wages, earnings, compensation, commissions, bonuses, or in any
13 other form of income or remuneration; offers of benefits to be paid for (in whole or in part) or
14 provided by the employer(s) regardless of whether those benefits were actually obtained; benefits
15 statements; insurance-related documents; pension rights and benefits; seniority; threatened or
16 potential termination and/or other separation of employment; termination and/or other separation
17 from employment; employee handbooks; and employer policies and procedures.

18
19 49. The Federal and State Income Tax Returns, W-2 forms and all other DOCUMENTS
20 that evidence, relate or refer to the amount and source of income earned or received by
21 PLAINTIFF for the years 2004 to the present, including, but not limited to, monies received from
22 self-employment, other employers, and/or the federal, state or local government.

23
24 50. Any and all DOCUMENTS that in any way discuss, relate or otherwise pertain to any
25 other lawsuits filed by PLAINTIFF or filed by others on PLAINTIFF's behalf, or any other
26 complaints, charges, grievances or other legal or equitable claims made by PLAINTIFF, or made
27 by others on PLAINTIFF's behalf, against an employer other than DEFENDANT.

1 51. Any and all DOCUMENTS that refer or relate to any discussion(s) that PLAINTIFF
2 has had with any individual concerning (a) the fact that PLAINTIFF is suing DEFENDANTS;
3 and/or (b) PLAINTIFF's claim or belief that DEFENDANTS, or any of its partners, affiliates,
4 related entities, employees or agents, harmed PLAINTIFF or any other person in any way.
5

6 52. All personal or business calendars, journals, diaries, notebooks, logs, appointment
7 books or the like, possessed or maintained by, or on behalf of, PLAINTIFF, from 2004 to the
8 present.
9

10 53. All statements or invoices, from 2004 through the present, relating to any credit card
11 and/or ATM card held by PLAINTIFF that demonstrate meal or other food charges on any
12 claimed workday.
13

14 54. All statements or invoices, from 2004 through the present, relating to any cellular
15 telephone maintained by PLAINTIFF.
16

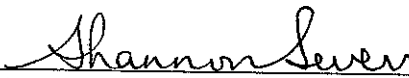
17 55. Any and all DOCUMENTS that in any manner constitute, discuss or otherwise relate
18 to any notes, writings, or other DOCUMENTS made by any person other than PLAINTIFF that
19 relate in any manner to PLAINTIFF's employment with DEFENDANTS and/or any affiliated or
20 related entity, and/or to the allegations in or any and all other matters encompassed by the
21 COMPLAINT or other pleadings herein.
22

23 56. Any and all tape or video or other audio recordings containing any remarks,
24 conversation or speech by or about any past or present agent, employee or representative of
25 DEFENDANTS and/or any affiliated or related entity.
26
27
28

1 57. Any and all DOCUMENTS not otherwise identified or otherwise referred to herein
2 that support or pertain in any way to the allegations in or any and all other matters encompassed
3 by the COMPLAINT or other pleadings herein.
4

5 DATED: March 10, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP
ELENA R. BACA
SHANNON S. SEVEY

8 By: 
9 SHANNON S. SEVEY

10 Attorneys for Defendant
11 BelmontCorp
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14 Attorneys for Defendant
15 BelmontCorp.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SANTA CLARA

18 SALVADORE TEMORES,
19 Plaintiff,
20 vs.

CASE NO. 1-08-CV 106332

**PROOF OF SERVICE BY HAND
DELIVERY**

21 BELMONT VILLAGE SUNNYVALE,
22 INC., a California Corporation,
23 BELMONTCORP, a Maryland
24 Corporation, BELMONT VILLAGE and
25 DOES 1-25, inclusive,
26 Defendants.

PROOF OF SERVICE BY HAND DELIVERY

STATE OF CALIFORNIA

)
) ss:

CITY AND COUNTY OF SANTA CLARA

I am employed in the City of Palo Alto, County of Santa Clara, State of California. I am over the age of 18, and not a party to the within action. My business address is 1117 S. California Avenue, Palo Alto, California 94304-1106.

On March 10, 2008, I caused to be served copies copy of the foregoing documents described as:

DEFENDANT BELMONT CORP'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF SALVADORE TEMORES

NOTICE OF DEPOSITION OF PLAINTIFF SALVADORE TEMORES

PROOF OF SERVICE BY HAND DELIVERY

☐

VIA PDF EMAIL:

By forwarding the documents by electronic transmission on this date, in compliance with Civil L.R. 23-2, to:

☐

VIA U.S. MAIL:

On December 14, 2006, at Palo Alto, California. by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth above.

☒

VIA HAND DELIVERY:

I caused to be delivered such sealed envelope by hand to the offices of the addressees listed below pursuant to CCP § 1011.

Ashwin Ladva
Ladva, Shoker & Associates
530 Jackson Street, 2nd Floor
San Francisco, CA 94133


☐

VIA FACSIMILE:

I caused said documents to be transmitted by facsimile pursuant to Federal Rule of Civil Procedures 5 (b)(2)(d). The facsimile was transmitted to the facsimile numbers shown below on _____. The facsimile transmission report indicated that the transmission was complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 10, 2008, at Palo Alto, California.


Cheryl A. Gardner

1 PAUL, HASTINGS, JANOFSKY & WALKER LLP
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13 Attorneys for Defendants
14 BELMONT VILLAGE SUNNYVALE, INC.,
15 BELMONTCORP, AND BELMONT VILLAGE L.P.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SANTA CLARA

18 SALVADORE TEMORES,

19 Plaintiff,

20 vs.

21 BELMONT VILLAGE SUNNYVALE,
22 INC., a California Corporation;
23 BELMONTCORP, a Maryland
24 Corporation; BELMONT VILLAGE, and
25 DOES 1-25, inclusive,

26 Defendants.

CASE NO. 108CV106332

**DEFENDANTS' ANSWER TO
PLAINTIFF'S UNVERIFIED COMPLAINT**

27 TO PLAINTIFF SALVADORE TEMORES AND TO HIS ATTORNEYS OF RECORD,
28 ASHWIN LADVA, JASON LUNDBERG AND LADVA LAW FIRM:

29 Defendants BELMONT VILLAGE SUNNYVALE, INC., BELMONTCORP,
30 AND BELMONT VILLAGE L.P. ("Defendants"), for themselves alone and no other defendant,
31 hereby answer the unverified Complaint ("Complaint") of Plaintiff SALVADORE TEMORES
32 ("Plaintiff") as follows:

1 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,
2 Defendants deny, generally and specifically, each and every allegation in Plaintiff's Complaint.

3
4 2. Defendants further deny, generally and specifically, that Plaintiff is entitled
5 to the relief requested, or that Plaintiff has been or will be damaged in any sum, or at all, by
6 reason of any act or omission on the part of Defendants, or any of their past or present agents,
7 representatives, or employees.

8 Without admitting any facts alleged by Plaintiff, Defendants also plead the
9 following separate and affirmative defenses to the Complaint:

10
11 FIRST SEPARATE AND AFFIRMATIVE DEFENSE

12
13 3. The Complaint, and each of its causes of action, fails to state a claim upon
14 which relief can be granted.

15
16 SECOND SEPARATE AND AFFIRMATIVE DEFENSE

17
18 4. The Complaint is barred because, at all times material to the Complaint,
19 Plaintiff, and any person(s) Plaintiff purports to represent, were properly classified as exempt
20 from the overtime and/or meal and rest period provisions of the California Industrial Welfare
21 Commission ("IWC") Wage Orders and the California Labor Code, including but not necessarily
22 limited Industrial Welfare Commission Wage Order 4-2001 paragraphs (1)(A)(2) (administrative
23 exemption); (1)(A)(2)(b) (learned professional exemption); and/or (1)(A)(3)(h) (computer
24 professional exemption).

1 THIRD SEPARATE AND AFFIRMATIVE DEFENSE

2
3 5. The Complaint, and each of its causes of action, is barred because any
4 recovery from Defendants would result in the unjust enrichment of Plaintiff and/or any person(s)
5 Plaintiff purports to represent.

6
7 FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

8
9 6. The Complaint, and each of its causes of action, is barred because Plaintiff,
10 and any other person(s) Plaintiff purports to represent, misperformed their respective duties, and
11 failed to perform those duties which Defendants realistically expected each to perform. *Ramirez*
12 *v. Yosemite Water Co., Inc.*, 20 Cal. 4th 785 (1999); Cal. Lab. § 2857.

13
14 FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

15
16 7. Plaintiff's Complaint, and each purported claim alleged therein, is barred in
17 whole or in part because Defendants had an honest, good faith belief that all decisions with
18 respect to the employment of Plaintiff or any person Plaintiff purports to represent were made in
19 accordance with the California Industrial Welfare Commission's Wage Orders and California law
20 with respect to compensation, and were made by Defendants solely for legitimate, business-
21 related reasons and were reasonably based upon the facts as Defendants understood them.

22
23 SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

24
25 8. Plaintiff's claims are barred, in whole or in part, by all applicable statutes
26 limitations, including California Code of Civil Procedure Sections 335.1, 338, and 340; California
27 Labor Code Sections 200 *et seq.*; and California Business and Professions Code Section 17208.

1 SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

2
3 9. Plaintiff's Complaint is barred by the doctrines of *res judicata* and/or
4 collateral estoppel.

5
6 EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

7
8 10. The Complaint, and each claim for relief contained therein, is barred to the
9 extent that Plaintiff or any of the person(s) Plaintiffs purport to represent are covered by any prior
10 settlement agreement related to any claims asserted in this lawsuit.

11
12 NINTHSEPARATE AND AFFIRMATIVE DEFENSE

13
14 11. The Complaint, and each claim for relief contained therein, is barred on the
15 grounds that Plaintiff agreed to submit the causes of action contained therein to arbitration and/or
16 other internal administrative remedies which Plaintiff failed to exhaust.

17
18 TENTH SEPARATE AND AFFIRMATIVE DEFENSE

19
20 12. Plaintiff's claim for waiting time penalties fails because any failure to pay
21 wages was not willful within the meaning of California Labor Code Section 203.

22
23 ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

24
25 13. Plaintiff's claim for penalties for failure to furnish itemized wage
26 statements fails because Plaintiff, and any person(s) Plaintiff purports to represent, did not suffer
27 any injury thereby and because any recordkeeping defects were unintentional.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

14. Plaintiff's claim for penalties for failure to furnish itemized wage statements fails because Plaintiff, and any person(s) Plaintiff purports to represent, were properly classified as exempt from the overtime provisions of the California Industrial Welfare Commission Orders and California law.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

15. Plaintiff's claims for failure to provide meal and rest periods fail because Plaintiff, and any person(s) Plaintiff purports to represent, were properly classified as exempt employees under California Law and the California Industrial Welfare Commission Orders.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

16. Plaintiff's claims for failure to provide meal and rest periods fail because Plaintiff, and any person(s) Plaintiff purports to represent, were provided the opportunity to take meal and rest periods as required under California Labor Code Sections 226.7 and 512.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

17. Plaintiff, and any person(s) Plaintiff purports to represent, are not entitled to any penalty award under Sections 203, 210, 226, 226.3, 226.7, 558, 1194, and, but not limited to, 2699 of the California Labor Code because, at all times relevant to the Complaint, Defendants did not willfully fail to comply with the compensation provisions of the California Labor Code or the applicable wage order, but rather acted in good faith and had reasonable grounds for believing that they did not violate the compensation provisions of the California Labor Code or the applicable wage order.

1 SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

2
3 18. In the event that Plaintiff otherwise is entitled to an award of damages
4 against Defendants, that award must be barred or reduced by amounts already paid to Plaintiff
5 and/or any person(s) Plaintiff purports to represent.
6

7 SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

8
9 19. The damages, if any, of Plaintiff, and any person(s) Plaintiff purports to
10 represent, the existence of which is expressly denied, are barred or diminished by reason of the
11 failure of Plaintiff and/or those Plaintiff purports to represent to mitigate those damages.
12

13 EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

14
15 20. To the extent Plaintiff seeks any penalties, such claims are barred by a one-
16 year statute of limitations. Cal. Civ. Proc. Code § 340(a).
17

18 NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

19
20 21. Plaintiff's claim under the California Business and Profession Code is
21 barred because the remedies for the alleged violations are limited to the remedies expressly
22 provided in the California Labor Code.
23

24 TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

25
26 22. Plaintiff's claim for relief under California Business and Professions Code
27 Sections 17200 *et seq.* is barred to the extent that Plaintiff seeks any remedy other than those
28 available under the statute, namely restitution and injunctive relief.

1 TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

2
3 23. Plaintiff's claim under California Business and Professions Code
4 Sections 17200 *et seq.* is barred because Plaintiff is not seeking recovery of a quantifiable sum
5 owed by Defendant to Plaintiff, or any person(s) Plaintiff purports to represent.
6

7 TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

8
9 24. Plaintiff's claim for a Court order restoring money to him is a claim for
10 restitution damages and is barred because restitution damages under California Business and
11 Professions Code Sections 17200, *et seq.* deny due process, impinge upon procedural and
12 substantive due process rights, and violate the United States Constitution.
13

14 WHEREFORE, Defendants pray for judgment as follows:
15

16 1. That Plaintiff take nothing by reason of his Complaint, that the Complaint
17 be dismissed in its entirety with prejudice, and that judgment be entered for Defendant;
18

19 2. That Defendants be awarded their reasonable costs and attorneys' fees; and
20

21 3. That Defendants be awarded such other and further relief as the Court
22 deems just and proper.
23
24
25
26
27
28

1 DATED: March 28, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP
SHANNON S. SEVEY

2
3 By: 
4 SHANNON S. SEVEY

5 Attorneys for Defendants
6 BELMONT VILLAGE SUNNYVALE, INC.,
7 BELMONTCORP, AND BELMONT VILLAGE
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17 BELMONT CORP, AND BELMONT VILLAGE L.P.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SANTA CLARA

20 SALVADORE TEMORES,

21 Plaintiff,

22 vs.

23 BELMONT VILLAGE SUNNYVALE,
24 INC., a California Corporation;
25 BELMONT CORP, a Maryland
26 Corporation; BELMONT VILLAGE,
27 and DOES 1-25, inclusive,

28 Defendants.

CASE NO. 1-08-CV 106332

**NOTICE TO STATE COURT CLERK OF
FILING OF NOTICE OF REMOVAL TO
FEDERAL COURT**

1 TO THE CLERK OF THIS COURT, PLAINTIFF SALVADORE TEMORES AND TO HIS
2 ATTORNEY OF RECORD, ASHWIN LADVA, ESQ. AND THE LADVA LAW FIRM:


3 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in
4 the United States District Court for the Northern District of California on March 28, 2008. A true
5 and correct copy of the Notice of Removal to Federal Court, Declaration of Ann Schumacher in
6 Support of Defendants' Notice of Removal, and Declaration of Shannon S. Sevey in Support of
7 Defendant's Notice of Removal are attached to this Notice as Exhibit "A," and are served and
8 filed herewith.

9 The filing of said Notice of Removal effects the removal of the above-entitled
10 action from this Court.

11 Dated: March 28, 2008

12 PAUL, HASTINGS, JANOFSKY & WALKER LLP
13 ELENA R. BACA
14 SHANNON S. SEVEY

15 By:


16 SHANNON S. SEVEY

17 Attorneys for Defendants
18 BELMONT VILLAGE SUNNYVALE, INC.,
19 BELMONT CORP, AND BELMONT VILLAGE
20 L.P.
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17 BELMONT CORP, AND BELMONT VILLAGE L.P.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SANTA CLARA

20 SALVADORE TEMORES,

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22 vs.

23 BELMONT VILLAGE SUNNYVALE,
24 INC., a California Corporation;
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26 Corporation; BELMONT VILLAGE, and
27 DOES 1-25, inclusive,

28 Defendants.

CASE NO. 1-08-CV 106332

**NOTICE TO ADVERSE PARTY OF
REMOVAL TO FEDERAL COURT**

1 TO PLAINTIFF SALVADORE TEMORES AND TO HIS ATTORNEY OF RECORD,
2 ASHWIN LADVA, ESQ. AND THE LADVA LAW FIRM:
3

4 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the
5 United States District Court for the Northern District of California on March 28, 2008. A true
6 and correct copy of the Notice of Removal to Federal Court, Declaration of Ann Schumacher in
7 Support of Defendants' Notice of Removal, and Declaration of Shannon S. Sevey in Support of
8 Defendant's Notice of Removal are attached to this Notice as Exhibit "A," and are served and
9 filed herewith.
10

11 The filing of said Notice of Removal affects the removal of the above-entitled
12 action from this Court.
13

14 Dated: March 28, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP
ELENA R. BACA
SHANNON S. SEVEY

15
16
17 By: Shannon Sevey
SHANNON S. SEVEY

18
19 Attorneys for Defendants
20 BELMONT VILLAGE SUNNYVALE, INC.,
21 BELMONT CORP, AND BELMONT VILLAGE
22 L.P.
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